

Vol. II.
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 93.

WEBSTER ELECTRIC COMPANY, PETITIONER,

vs.

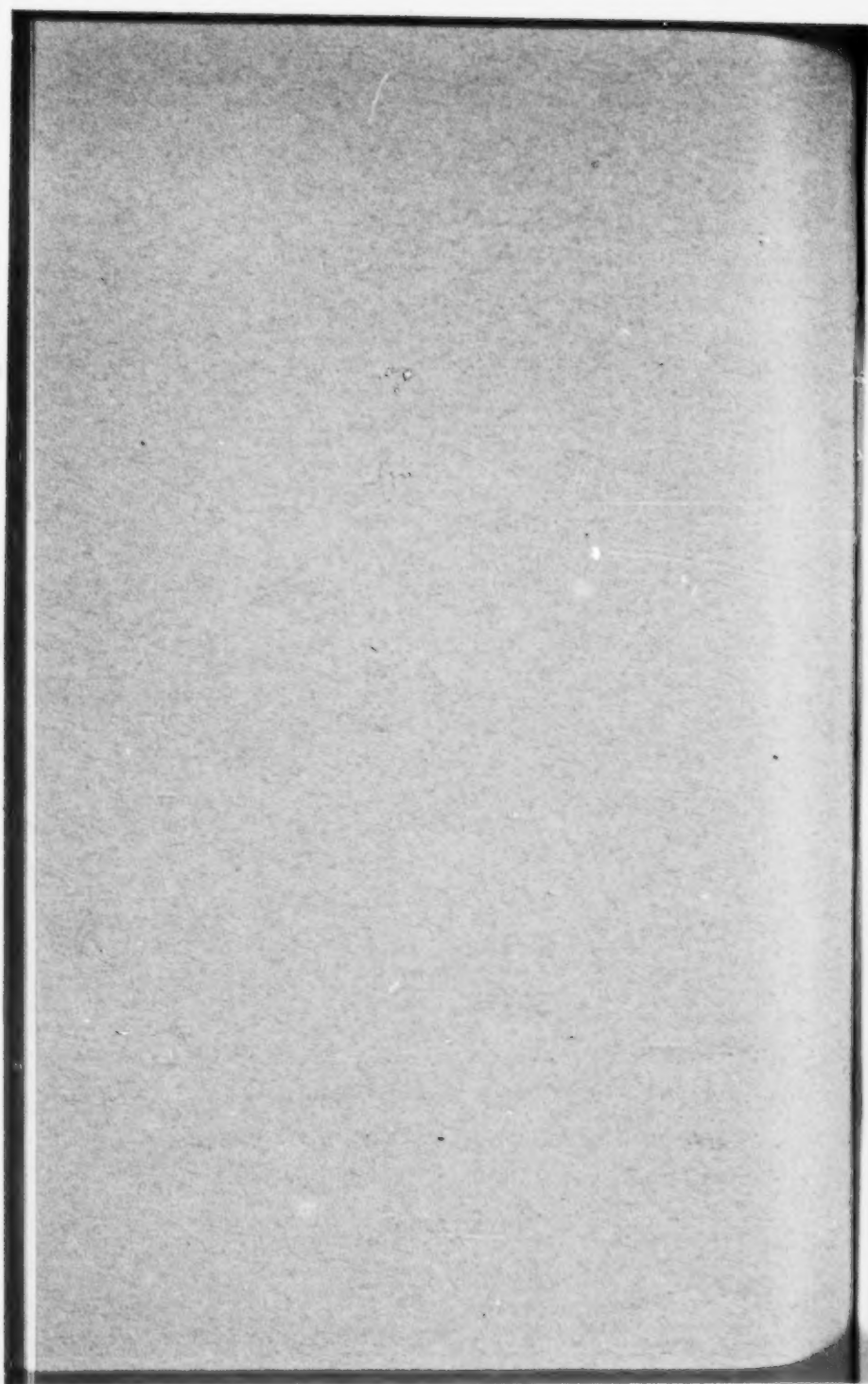
SPLITDORF ELECTRICAL COMPANY.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

PETITION FOR CERTIORARI FILED JULY 31, 1922.

CERTIORARI AND RETURN FILED DECEMBER 13, 1922.

(29,070)



(29,070)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 93.

WEBSTER ELECTRIC COMPANY, PETITIONER,

vs.

SPLITDORF ELECTRICAL COMPANY.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

VOLUME II.

INDEX.

	Page.
Plaintiff's Exhibit No. 1—Letter, March 15, 1909, International Harvester Co. to experimental department....	1
No. 2—Letter, April 29, 1909, Webster to International Harvester Co.—Attention of A. E. Mayer	2
No. 3—Letter, March 17, 1909, International Harvester Co. to E. H. Kimbark.....	3
No. 4—Letter, June 11, 1909, International Harvester Co. to experimental department....	3
No. 5—Photograph	5
No. 6—Decision recording change in design or material	7
7—Letter, June 3, 1909, Webster Mfg. Co. to Cavanagh	7

	Page.
Plaintiff's Exhibit No. 8—Extract from report of meeting No. 176, May 20, 1909, in re Milton magneto.....	8
No. 9—Letter, May 26, 1909, International Harvester Co. to Cavanaugh.....	8
No. 10—Letter, May 6, 1909, Kimark to Mayer.....	9
No. 13 and Kane's Exhibit No. 1—Pamphlet illustrating link type machine of 1909.....	11
No. 16 and Kane's Exhibit No. 2—Pamphlet illustrating self-contained construction of 1909....	15
Kane's Exhibit No. 7—Drawing of April 11, 1909....	27
No. 18 and Kane's Exhibit No. 5—Kane's Manila paper drawing.....	29
No. 42—Record in case of Emil Podlesak et al. vs. Sumter Electrical Co. in U. S. district court, eastern district of South Carolina...	31
Bill of complaint.....	31
Subpoena ad respondendum.....	36
Return on service of writ.....	37
Notice	38
Order extending time for defendant to answer..	38
Return on service of writ.....	39
Petition for order extending time to answer....	39
Assignment from Emil Podlesak and Henry Joseph Podlesak to Webster Electric Co., dated September 4, 1915.....	41
Order of discontinuance.....	46
Certificate of clerk.....	47
No. 46a—Oscillogram of current curve plaintiff's device	49
No. 49—Defendant's device, type A, front diagram..	51
No. 50—Defendant's device, type B, front diagram..	53
No. 51—Defendant's device, type C, front diagram..	55
No. 52—Defendant's device, type B, side perspective.	57
No. 55—Engine cycle.....	59
No. 56—Defendant's device, type A, right side.....	61
No. 57—E. J. Kane's device, top view.....	63
No. 57a—E. J. Kane's device, side view.....	65
No. 59—Record in case of Emil Podlesak et al. vs. Alamo Mfg. Co. in U. S. district court, eastern district of Michigan, southern division.	67
Answer of Emil Podlesak to certain of defendant's interrogatories.....	67
Certificate of clerk.....	68
Amended bill of complaint.....	69
Certificate of clerk.....	74
Motion to dismiss.....	75
Certificate of clerk.....	76
Motion to amend answer.....	77
Certificate of clerk.....	78
Order granting defendant's motion for leave to amend answer.....	79

INDEX.

iii

	Page.
Plaintiff's Exhibit No. 59—Certificate of clerk.....	80
Motion to take a deposition.....	80
Affidavit of Lynn A. Williams.....	81
Certificate of clerk.....	82
Order granting motion to take a deposition.....	83
Certificate of clerk.....	84
Deposition of Henry J. Podlesak.....	84
Notary's certificate.....	88
Summons	89
Certificate of clerk.....	90
Motion for an order dropping the case from the trial calendar.....	90
Affidavit of Robert M. See.....	91
Certificate of clerk.....	92
Final decree.....	93
Certificate of clerk.....	94
No. 60—Affidavit of Lynn A. Williams.....	95
Exhibit A—Telegram, December 2, 1915, Sumter Electrical Co. to Williams.....	96
Exhibit B—Telegram, December 2, 1915, John F. Alvord to Williams.....	96
Exhibit C—Letter, December 2, 1915, Sumter Electrical Co. to Williams.....	97
Exhibit D—Telegram, December 2, 1915, Sumter Electrical Co. to Williams.....	97
Exhibit E—Letter, December 2, 1915, Splittdorf Electrical Co. to Williams.....	98
No. 61—Letter, August 10, 1915, addressed to "Dear Van"	98
No. 62—Voucher check for \$6,728.90, dated January 13, 1919, Webster Electric Co. to Splitt- dorf Electrical Co.....	101
No. 64—Escrow agreement between John L. Milton and Webster Electric Co., dated April 10, 1912	103
Acceptance of escrow, signed by Lynn A. Wil- hams	105
Agreement between John L. Milton and Webster Electric Co., dated April 10, 1912.....	106
Assignment from John L. Milton, dated April 10, 1912	111
Notary's certificate.....	112
No. 65—Agreement between John L. Milton and Web- ster Electric Co., dated November 23, 1907.....	113
No. 66—Letter and envelope, dated May 5, 1916, Gerald D. Chiville to John L. Milton.....	121
No. 67—Letter, May 9, 1916, Milton to Chiville.....	123
No. 68—Letter, October 11, 1915, Milton to Williams.,	124
Letter, November 5, 1915, to Milton.....	124
Letter, November 19, 1915, to Milton.....	125

	Page.
Plaintiff's Exhibit No. 68—Letter, November 20, 1915, Milton to Williams	125
Letter, December 30, 1915, Williams to Milton	126
Letter, January 3, 1916, Milton to Williams & Bradbury	127
Letter, January 4, 1916, Williams & Bradbury to Milton.....	127
Letter, January 6, 1916, Milton to Williams & Bradbury	128
Letter, January 11, 1916, Williams & Bradbury to Milton.....	128
Letter, May 3, 1916, Williams, Bradbury & See to Milton.....	129
Letter, May 5, 1916, Milton to Williams, Bradbury & See.....	129
Telegram, May 6, 1916, Williams, Bradbury & See to Milton.....	130
Letter, May 9, 1916, to Milton.....	130
Letter, September 11, 1916, to Milton.....	131
Letter, Milton to Williams, Bradbury & See.	131
Letter, October 27, 1916, to Milton.....	132
Letter, October 28, 1916, to Williams, Bradbury & See.....	132
Telegram, October 28, 1916, Milton to Williams, Bradbury & See.....	133
Letter, December 1, 1916, to Milton.....	133
Letter, December 5, 1916, Milton to Williams, Bradbury & See.....	134
Letter, December 18, 1916, to Milton.....	134
Letter, December 26, 1916, Milton to Williams, Bradbury & See.....	135
Letter, December 27, 1916, to Milton.....	136
No. 68A—Letter, May 12, 1916, to Wm. Kroeplin.....	136
No. 68B—Letter, May 15, 1916, Kroeplin to Williams, Bradbury & See.....	137
No. 68C—Letter, May 18, 1916, to Kroeplin.....	138
No. 68D—Letter, May 20, 1916, Kroeplin to Williams, Bradbury & See.....	139
No. 74—Letter, September 9, 1908, Webster to Milton	139
No. 75—Telegram, May 7, 1909, Webster to Webster Mfg. Co.....	140
No. 77—Oscillogram of defendant's device, type B....	141
No. 78—Diagram defendant's device, type B, illustrating angles of striking.....	143
No. 80—Trust agreement between John L. Milton and Webster Electric Co., dated December 11, 1915.....	145
Acceptance of trust, signed by Lynn A. Williams	148

INDEX.

v

Page.

Plaintiff's Exhibit No. 80—Escrow agreement between John L. Milton and Webster Electric Co., dated April 10, 1912	148
Acceptance of escrow, signed by Lynn A. Williams	150
Assignment from John L. Milton to Lynn A. Williams, dated April 10, 1912.....	151
No. 81—Deposition of Frederick C. Manning—Wisconsin ex rel. Podlesak vs. Webster Electric Co.	153
Defendant's Exhibit 5—Assignment from trustees of Sumter Electrical Co. to Splittdorf Electrical Co., dated September 26, 1916....	217
No. 82—Deposition of Harry R. Vandever—Wisconsin ex rel. Podlesak vs. Webster Electric Co.	275
Letter, May 20, 1917, Van Deventer to Reynolds	312
Letter, November 3, 1913, Webster Electrical Co. to Van Deventer.....	314
No. 83—Notice to Lynn A. Williams.....	327
Abstract of minutes of a special meeting of the board of directors of the Splittdorf Electrical Co., held December 9, 1916....	330
Assignment from trustees of Sumter Electrical Co. to Splittdorf Electrical Co., dated September 26, 1916.....	330
Defendant's Exhibit No. 1—Waterman letter of February 16, 1909....	333
No. 2—Letter, April 6, 1909, Waterman to Kane..	335
No. 4—Letter, April 16, 1909, Webster to Milton..	337
No. 15—Letter, April 22, 1909, Webster to Milton..	337
No. 5A—Letter, May 1, 1909, Webster to Milton...	338
No. 10—Letter, May 1, 1909, Webster to Milton....	339
No. 11—Letter, May 6, 1909, Webster to Milton...	339
No. 12—Letter, May 8, 1909, Webster to Milton...	340
No. 13—Letter, May 8, 1909, Webster to Milton...	341
No. 14—Letter, May 10, 1909, Milton to Webster...	341
No. 6—Letter, May 21, 1909, Milton to Webster...	342
No. 8—Letter, May 21, 1909, Webster to Milton..	343
No. 7—Letter, May 22, 1909, Webster to Milton..	343
No. 9—Letter, May 24, 1909, Milton to Webster...	344
No. 22—Letter, October 25, 1909, Webster to Milton	345
No. 22A—Letter, November 10, 1909, Milton to Couchman	345
No. 22B—Letter, November 10, 1909, to Webster....	346
No. 30—Letter, September 10, 1910, Brown & Williams to Milton.....	347
Letter, September 29, 1910, Milton to Williams	347

	Page.
Defendant's Exhibit No. 29—Letter, October 1, 1910, Williams to Milton	347
No. 39—Letter, October 10, 1910, Milton to Webster	348
No. 24—Letter, October 13, 1910, Williams to Milton	348
No. 25—Letter, October 13, 1910, Williams to Milton	349
No. 37—Letter, October 25, 1910, Williams to Milton	350
No. 34—Letter, December 3, 1910, Brown & Williams to Milton.....	351
No. 31—Letter, January 5, 1911, Brown & Williams to Milton.....	351
No. 32—Letter, February 7, 1911, Brown & Williams to Milton.....	352
No. 36—Letter, February 7, 1911, Williams to Milton	352
No. 38—Letter, February 8, 1911, to Webster.....	353
No. 35—Letter, February 9, 1911, Brown & Williams to Milton.....	353
No. 50—Letter, July 23, 1914, Loeb to Hood & Schley	354
No. 72—Letter, April 22, 1915, Williams to Podlesak	354
No. 41—Letter, November 19, 1915, Williams to Milton	355
No. 42—Letter, November 29, 1915, to Williams...	356
No. 40—Letter, June 2, 1916, Brown to Milton....	357
No. 43—Letter, June 7, 1916, Milton to Brown....	357
No. 44—Letter, September 11, 1916, Williams to Milton	358
No. 44A—Blank form: concession of priority.....	359
No. 44B—Letter, September 13, 1916, Motor Ignition & Devices Co. to Williams, Bradbury & See.....	359
No. 49—Certified photographic copy of the file-wrapper and contents in the matter of interference No. 39,013, Milton vs. Kane, subject-matter: magneto generator.....	360
No. 54—Certified photographic copy of the file-wrapper and contents in the matter of the letters patent of Edmund Joseph Kane, assignor to Webster Electric Co., No. 1,204,573.....	500
No. 55—Certified photographic copy of the file-wrapper and contents in the matter of the letters patent of Edmund Joseph Kane, assignor by mesne assignments to Webster Electric Co., No. 1,280,105.....	622

1

PLAINTIFF'S EXHIBIT #1.

Milwaukee Works, March 15, 1909.
The Milton Magneto.

Experimental Department,
Harvester Building, Chicago.

Gentlemen:

After careful consideration of the principal features of the Milton magneto existing today, both as erected by us here at Milwaukee, and as now suggested by the Webster people for erection to permit direct operation without altering present design of engine,—we have reached the following conclusions:

The entire outfit is more heavy and more bulky in general form and construction than desirable, if not than necessary, the new igniter including bracket, weighing about 25 pounds. The Milton magneto equipped for operation as erected regularly at Milwaukee, has required a strain of about 25 pounds on cylinder-boss. The size of this boss cannot be altered without interfering with engine repairs. The new arrangement of magneto proposed to permit erection in the field with less difficulty, will require a strain of approximately 100 pounds on this same boss,—work too much for present system of attachment, a condition sure to give trouble from rough handling as well as from wear in reasonable use. The magneto when in place as at present designed, is not sufficiently rigid and is not sufficiently secure to stand up properly under conditions of continuous operation. Several parts are not so readily accessible as to permit reasonably accurate adjustment with ordinary tools at hand. Excessive weight of parts moving at high speed, when erected on small engines, results in a vibration so noticeable as to cause sparks to take place out of time,—with resulting wear to ignitor-points and frequent backfiring. In brief, although the improved Milton magneto as now suggested for use, can be installed in the field by an engine expert of reasonable ability in perhaps about one hour, we do not by any means consider this improved form entirely satisfactory for regular shipment. The Webster people should thoroughly overhaul the entire outfit, and they should correct troubles covered by these statements submitted above. It may possibly be satisfactory to continue shipment of the Milton magneto in accordance with present practice, but unless these unsatisfactory conditions are corrected, we have good reason to consider it necessary to ar-

range for some substitue for this magneto for use on our engines,—entirely on the ground of defects developed.

Yours very truly,
 INTERNATIONAL HARVESTER COMPANY,
 Milwaukee Works,
 H. A. WATERMAN,
Superintendent.

PLAINTIFF'S EXHIBIT #2.

(Letterhead of Webster Mfg. Co.)

Dictated by T. K. W.—LK.

Chicago, April 29, 1909.

International Harvester Co.

Chicago, Ill.

Attention Mr A. E. Mayer,

Dear Mr. Mayer;

I enclose herewith protographs of the Harvester 6 HP engine, with the latest attachment, which we are sure will suit all interested in this proposition. As already stated, we have covered all the points of objection very properly registered by Mr. H. A. Waterman.

First, as regards the rigidity, we have attached the magneto now by two $\frac{3}{8}$ " bolts, which have an ultimate strain of 40000# and a safe working strain, (namely a factor of safety of 6), 3600# for the two bolts and we have only a strain of 35# against this. We are sure you will be satisfied on the point of rigidity.

Second, we control this with the exhaust rod so you only spark when there is a charge in the cylinder.

Third, We have made the magneto smaller, so we believe now that we have got exactly what we have all been working for.

I am going to New York this afternoon to be gone a week or ten days and I trust by the time I get back we can
 3 settle this question so that we can get your orders in sufficient quantities to ship promptly and to put it on a manufacturing basis.

Will you kindly notify us, a month in advance, so that we may get the magneto on your boat in time for your requirements.

Yours very truly,

F. K. WEBSTER
Pres.

4

PLAINTIFF'S EXHIBIT #3.

Milwaukee Works, March 17, 1909.
The Milton Magneto.

Experimental Department,
Harvester Building, Chicago.

Mr. Edward H. Kimbark.

Dear Sir:

Replying to your letter of the 16th of March.—In line with my statements in my letter to you of the 15th of March,—from what we have been able to learn at this plant, we hardly think it will be wise for us to push the Milton magneto, particularly for installation in the field, as at present designed.

Yours very truly,

INTERNATIONAL HARVESTER COMPANY,
MILWAUKEE WORKS,

H. A. WATERMAN,
Superintendent.

HAW-G

Copy to Mr. Mayer.

5

PLAINTIFF'S EXHIBIT NO. 4.

Milwaukee Works, June 11, 1909.
The Milton Magneto.

Experimental Department,
Harvester Building, Chicago.

Gentlemen:

The improved Milton magneto recently received, attached permanently to the ignitor-plug, has for sometime been in operation on a 6-HP engine. It is different in all of its parts from the magnetos we have regularly been receiving from the Webster Manufacturing Company, and these alterations submitted, overcome reasonably well, important objections raised by us in our letter to you of the 15th of March. The new magneto complete weighs about eighteen pounds, as against about thirty-two pounds for the old one. The magnets are shorter, the rotor is half an inch less in diameter, the springs are fastened to posts set into pole pieces, and the hole in the center brass casting supporting magneto proper, is half an inch smaller in diameter. The magneto as now presented seems to work well, and except for the fact apparatus of this nature is rather delicate when continuously exposed to dust and moisture, we see no reason why it should

not prove reasonably satisfactory, electrically and mechanically.

Because we already have seven different designs of ignitor-plugs for make-and-break engines, not including those of the new side-shaft engine,—if we are to purchase these new magnetos from the Webster Company, we should not have the ignitor-plug included as part of their product. By having them omit this plug, we shall be able to avoid the necessity for carrying in stock a larger number of magnetos than would be required if we purchased from the Webster people the magneto complete, including plug and bracket. The new-line side-shaft engine apparently without changing its design, will not permit the use of a magneto made as part of the ignitor-plug. This gives an additional reason for not having these magnetos furnished with the plugs as part of the magnetos proper.

It will of course be necessary for the Webster Company to continue making repair parts for the older style magnetos.

6 Because this new magneto certainly is an improvement over the older one, we recommend that our present order of these older magnetos be completed and delivered to us at a uniform rate per week before the 15th of August; that one dozen of these new type magnetos be delivered to us immediately, regular relivery of these new ones, including only magnets with coils, the rotor, the trip-finger and the springs for the trip-finger, to begin on the 15th of August at the rate of about fifty per week, this number then to be regulated by demands for shipment of engines thus equipped.

If this program can be followed, we will begin to make use of these new magnetos on the 1st of September,—decisions to be submitted accordingly.

Yours very truly,

INTERNATIONAL HARVESTER COMPANY.

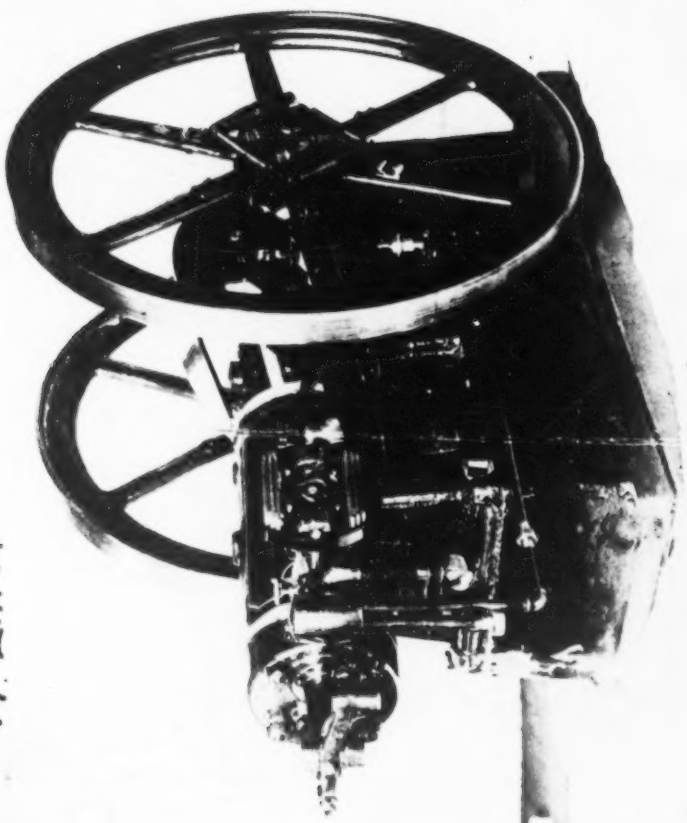
MILWAUKEE WORKS

H. A. WATERMAN,

Superintendent.

HAW-G

Ref. 5.



8

PLAINTIFF'S EXHIBIT NO. 6.

Decision Recording Change in Design or Material
Milwaukee Works Date August 30, 1909. Decision No. D-259.
Machine affected All Engines with Make-and-Break Ignition.
Principal parts affected Milton Magneto.

It has been decided to furnish the new circular, type D-2
Milton magneto attached to ignitor plug, for all vertical and
horizontal engines having make-and-break ignition, including
Junior, 2-, 3-, 6- and 25 HP vertical, 2-, 3-, 5- and 6 HP Non-
pareil, and 2½-, 4-, 6-, 8-, 10-, 12-, 15-, 20- and 25 HP horizontal
engines.

This magneto can be furnished on special order for above
engines for Foreign shipment after September 1, 1909, and
can be placed on engines now in the field.

Photo M-575 shows magneto complete.

Photo M-576 shows magneto in starting position.

Photo M-577 shows magneto in running position.

Photo M-578 shows magneto complete, attached to 10 HP
horizontal engine.

Recommended by International Harvester Company, Mil-
waukee Works,

Concurred in by H. A. Waterman

Approved by W. A. Cavanaugh

Date Sept 21-09

9

PLAINTIFF'S EXHIBIT NO. 7.

(Letterhead of Engineers, Founders & Machinists.)
Dictated by T. K. W.—LK.

Chicago, June 3, 1909.

Mr W. A. Cavanagh,
Harvester Bldg.
City.

Dear Mr Cavanagh;

(Milton Magneto)

Mr Joe Kane went over to the Deering Works and took the
measurements for the 15 HP engine and we have completed
the drawings. We will be able to put the magneto on nicely
and yet not interfere at all with the change speed device. We

will proceed at once to get out the patterns and rush the work as rapidly as possible.

Yours very truly,

WEBSTER M'F'G Co.

T. K. WEBSTER.

X

PLAINTIFF'S EXHIBIT NO. 8.

7; Milton Magneto:—The committee were shown a modified form of the Milton magneto. The improved magneto is attached more firmly to the cylinder than the one now used. It is attached by means of the two bolts which attach the ignitor. Also, the magneto does not operate when the engine cuts out. Mr. Waterman advised that he would like to run this improved form two or three weeks before passing upon it, and it was decided that this should be done, before we undertake to put out this type of magneto in quantities.

PLAINTIFF'S EXHIBIT NO. 9.

Milwaukee Works, May 26, 1909.

Milton Magneto.

Mr. W. A. Cavanaugh, Manager,
Experimental Department,
Harvester Building, Chicago.

Dear Sir:—

Replying to your letter of May 17th.

As outlined in the new works committee report #176, Mr. Waterman has arranged to run the Milton mageto which Mr. Kane left at this works for a period of two or three weeks. At completion of this test, we will make report covering magnetos to date.

Yours truly,

INTERNATIONAL HARVESTER COMPANY
Milwaukee Works.

H. A. WATERMAN,

Superintendent.

By

HAW
LCB—W

12

PLAINTIFF'S EXHIBIT NO. 10.

For Department and Interdepartment
Use Only
Experimental Department

May 6th, 1909

Mr. A. E. Mayer,
Division Manager,
Office,

Milton Magneto

Dear Sir:—

Referring to letter of the Webster Mfg. Co. of April 29th, Mr. Kane looked over this new method of attachment on the 4th and it looks to be an improvement over that previously used. He has arranged with the Webster Mfg. Co. to send one of these magnetos to Milwaukee for a test as soon as they can build up a second one. The new method of attachment refers to the attaching of a magneto to the spark plug bolts. The magneto also cuts out with the engine.

Yours very truly,

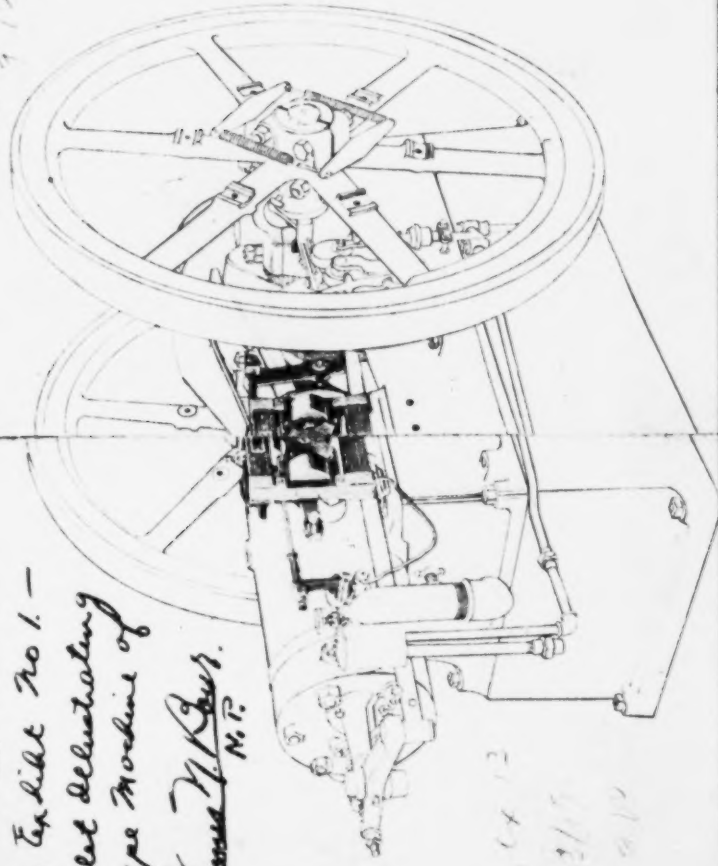
EDWARD H. KIMBARK

Copy sent to H A Waterman, Milwaukee Works



United States Patent Office
In re Invention No. 39,013
Milton Kane

Kane Exhibit No. 1 -
Pamphlet illustrating
Link Type Machine of
1904 -
James H. Kane
N.Y.



MILTON MAGNETOS

B-PMS

For Stationary and Portable
Gas, Gasoline, Oil and
Alcohol Engines

No Battery Needed to Help
Start the Engine

Milton Magnetos Give Entire Satisfaction Independent of Batteries



MILTON magnetos have no moving armatures, commutator, brushes, collector or slip rings, no moving wire or moving insulation. The shaft carries a small inductor made up of sheet steel stampings. There is nothing about them that can wear out.

This magneto generates a pulsating, alternating current to be used for low and high tension ignition systems, and is available for stationary and portable engines using gas, gasoline, kerosene or alcohol.

No Battery Needed to Help Start the Engine

Pull the engine around a half turn over the compression and the magneto will generate a spark to explode the charge.

Further, the spark does not increase in proportion as the speed of the engine increases. It will not burn out ignitor points.

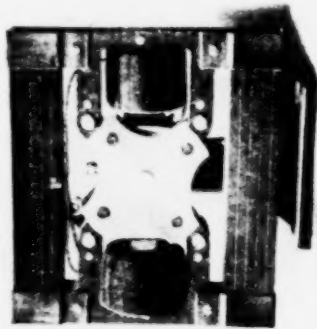
The contact of a low tension magneto produces a fat, hot spark anywhere throughout an arc of 45 degrees, and will take care of the advance and retard position of ignition.

These magnetos are always at their highest efficiency. The current is taken off in such a manner that

They are constantly building up their magnetic fields.

The permanent magnets can never become demagnetized. This is a unique feature of these

magnetos. In other types of magneto-electric machines, where the wires are moving or where they are not wound on extensions of the pole pieces, there is a counter electro motive force all through the period of generation, which has a demagnetizing influence against the field magnets and which so weakens them that in time the ignition will fail. In Milton magnetos two groups of permanent magnet steel bars furnish magnetism



This Milton Magneto operates at half the engine speed.

for the magnetic field, which flows through the divided, soft steel pole pieces in one general direction. These magnets are made by bringing them under the influence of a magnetic field. This could be done after the magnet is assembled by sending a current through the coils on the pole pieces of the machine. If a current is sent through these coils in one direction it furnishes magnetism for a given direction of magnetic flow. If the current is reversed in the coils, it will give

the reverse effect on the fields, or cause the magnetism to flow in the opposite direction. The projections and the windings are so connected that as the inductor oscillates it shifts the magnetism from one protection to another and in and out of the windings. As the magnetism flows into the coil, it generates a negative wave of current, and as it flows out, it generates a positive wave of current, this being the law of alternating current. The latter has a magnetizing effect on the permanent magnets and the former a demagnetizing effect. The magneto parts are so arranged that the positive or magnetizing current is used and the demagnetizing current allowed to pass unused. Therefore, the general tendency of the machine is to continuously build up its magnetic strength to its maximum point, which is called saturation.

The use of straight bar magnets affords a process of manufacture and magnetizing not practical with horse shoe magnets. These magnets are not heated to be shaped and their grain is maintained just as they leave the rolls. This molecular arrangement is a necessary function of an absolutely permanent magnet.

Dust or dampness do not effect them. The coils are thoroughly waterproofed and they will work in the rain just as well as under shelter. They are not even affected in the smallest degree by a continuous drenching with buckets of water or oil.

They are so simple that there is nothing about them to go wrong. They need no adjustment.

This attachment is furnished on special order with 4, 6, 8, 10, 12, 15 and 20-horse power stationary and portable horizontal engines.

PRESERVE THIS PAMPHLET FOR FUTURE REFERENCE

Directions for Attaching
THE
"MILTON MAGNETO"
TO THE
International Harvester Company's
HORIZONTAL GASOLINE ENGINES

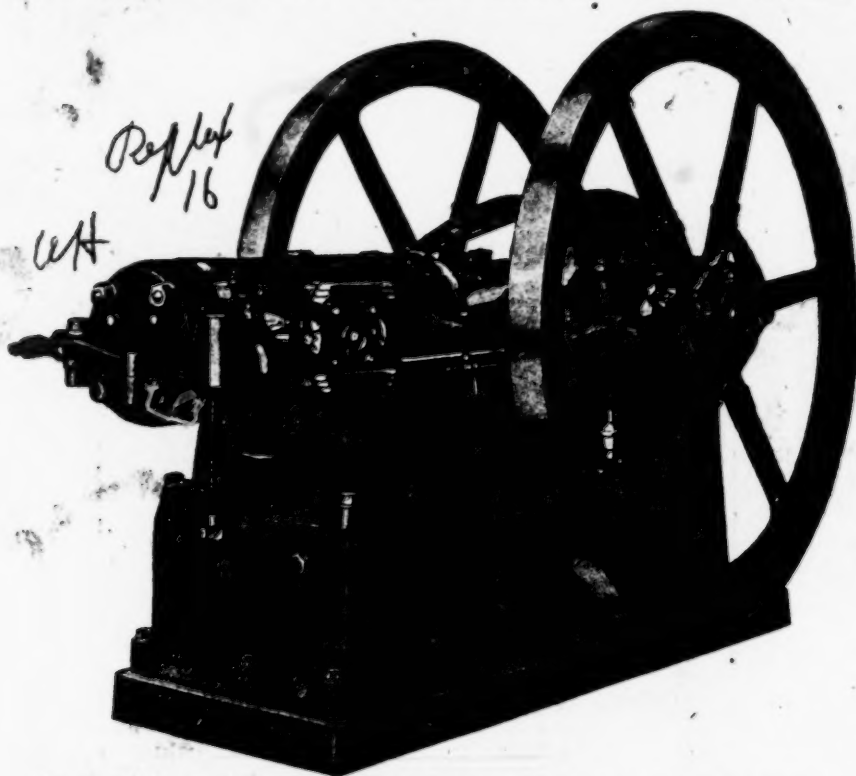


Illustration No. 1—6-Horse Power I. H. C. Gasoline Engine Equipped with Magneto

International Harvester Company of America
(Incorporated)

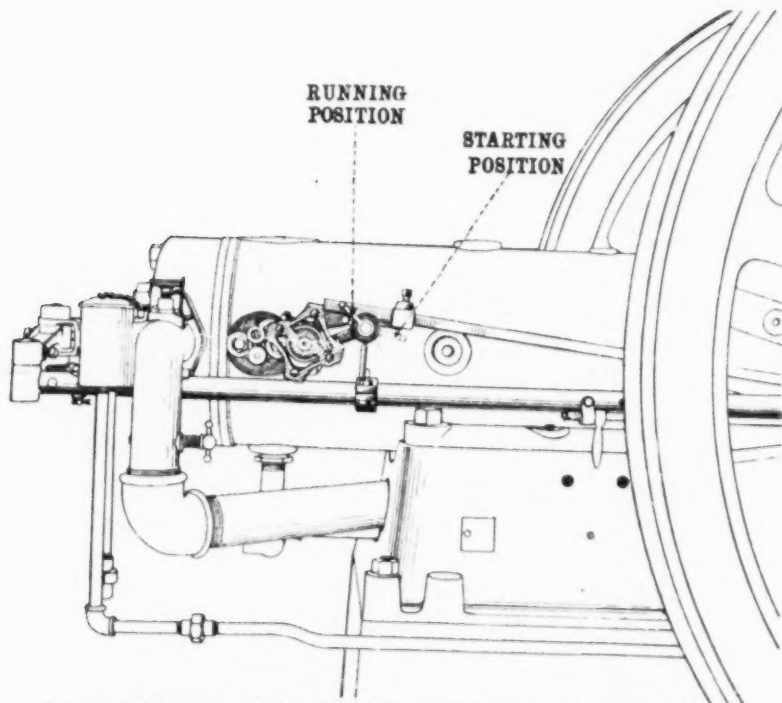
CHICAGO, U. S. A.

INTERNATIONAL PUMP SHOP, CHICAGO, U. S. A.

Instructions for Attaching the Milton Magneto to the International Harvester Company's Horizontal Gasoline Engines

First, remove the igniter trip rod; then remove igniter roller and take set screw out of the boss. Remove igniter plug and clean the old casket off the boss on cylinder.

The magneto bracket and igniter plug are in one piece. Put the igniter plug part of the magneto in place where the igniter was, and screw up the nuts with the special wrench which comes with the magneto. Then put the magneto push rod in place where the igniter push rod was. Turn the



Section of Magneto Illustrated, Showing Starting and Running Positions

engine so that the eccentric is as far away from the cylinder as it will go. Then adjust magneto push rod so that the distance between it and the trip finger is about $\frac{1}{8}$ ". (See Figure 1.) See that the lever which carries the roller is in the position marked "start." (See Illustration 4.) Then turn the engine over until it is at the end of the compression stroke. Then push the magneto trip forward (see Figure 2), until the magneto push finger trips off. Fasten the trip in this position.

This will be the position for starting the engine. When the spark advance handle is moved to the run position, the push finger should trip about 30 degrees before the crank of the engine reaches the end of the compression stroke. (See Illustration No. 5.)

The inductor must work freely between pole pieces. There should be air gaps or clearance between them. Be careful that no iron filings or chips get in here.

The igniter points are held together at all times, except at time of spark. There is a special wrench supplied with magneto for putting the

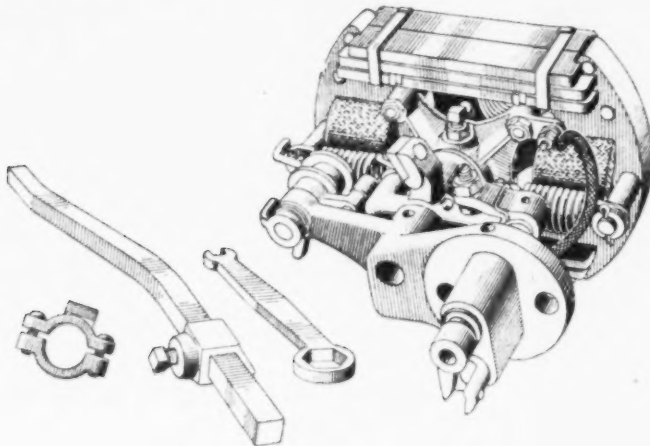


Illustration No. 6

magneto on the engine. Hang this up so that you will always have it, as it is difficult to take igniter off without it. (See Illustration No. 6.)

* Oil or water do not affect the magneto.

Never take the magneto apart if it does not operate properly. Read the instructions over again very carefully and you will find the trouble and remedy it.

TRADE



MARK

United States Patent Office

In re Interference No. 34013 - Milton & Kane

*Kane's Exhibit No 2. - Pamphlet Illustrating
Self-Contained Construction of 220 2"*

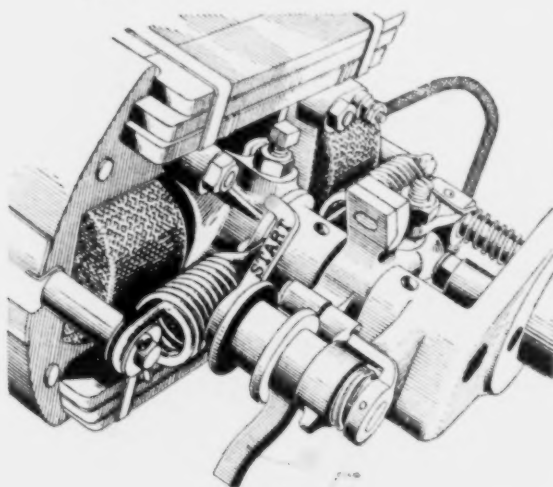


Illustration No. 4

TO ADJUST MAGNETO CUT-OUT

Fasten the small clamp, which bumps the magneto push rod lifter, to the exhaust rod. (See Figure 1.) Adjust this clamp so that when the detent is holding the exhaust valve open, it holds the magneto push rod "A" lifter so that the magneto push rod will not engage the magneto trip finger "B".

TIMING

Hold the inductor over against the springs to the position shown in Figure 3. The corner "E" of inductor will then just be

leaving corner "G" of the pole piece. Then adjust the screw in the movable electrode, so that the igniter points are just separated. This adjustment must be maintained.

TO TEST FOR SPARK

Hold the magneto wire against movable electrode when the trip finger is tripped. When the trip finger hits the movable electrode, there should be a bright spark between the wire and the electrode. If there is no spark, the failure may be due to two things. First, the magneto may be turned wrong. (See Figure 3.) Second, it is necessary that the wire should be so held, that, when the igniter points separate, the movable electrode is jerked away from the wire.

If the engine refuses to start, or misses fire, see that the movable electrode works freely.

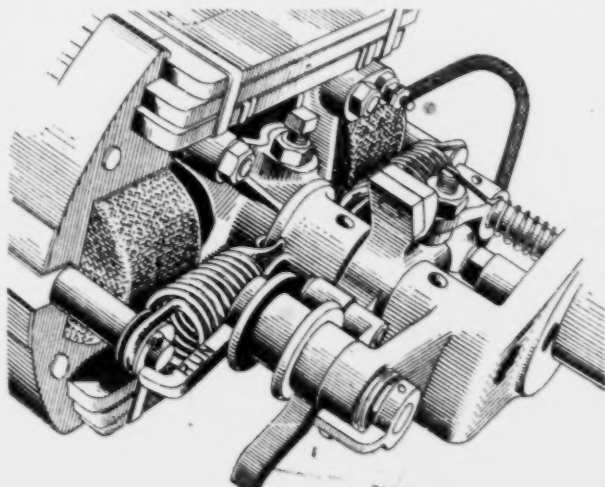
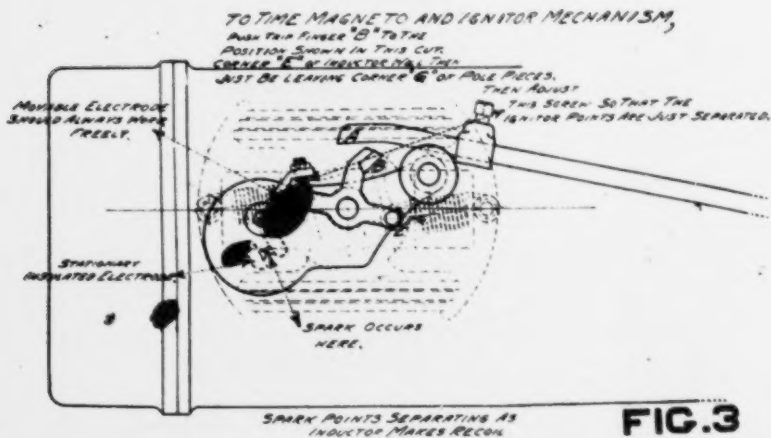
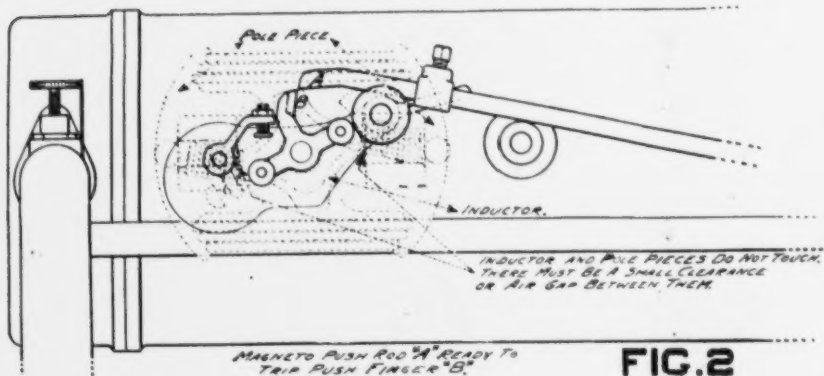
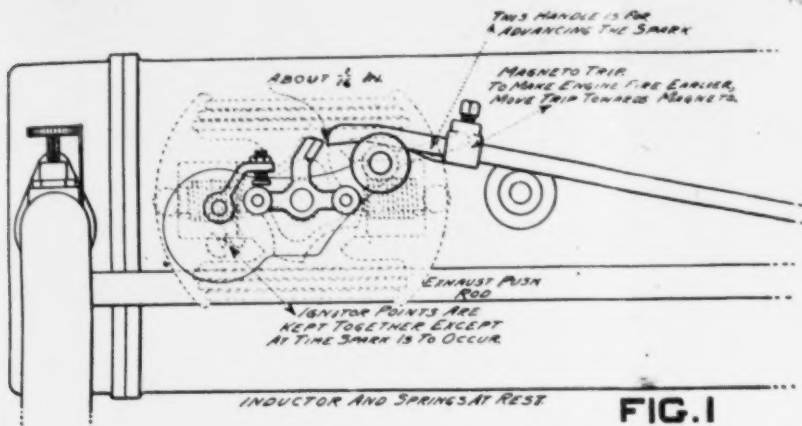


Illustration No. 5

Make sure that the wire connecting the insulated electrode of igniter and the binding part of the magneto is in good condition.



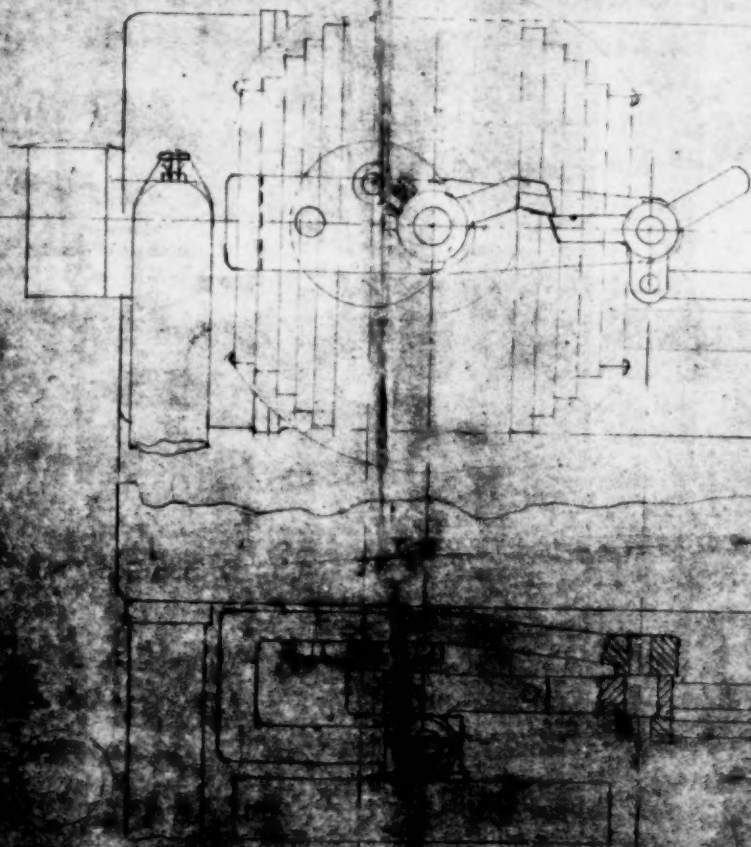
PRICE LIST OF REPAIR PARTS

FOR ATTACHING THE

Milton Magneto to the I. H. Co's Horizontal Gasoline Engines

DESCRIPTION	Cat. No.	Price List						
		4-H.P.	6-H.P.	8-H.P.	10-H.P.	12-H.P.	15-H.P.	20-H.P.
Magneto trip rod, $\frac{1}{4}$ " sq. x 40 $\frac{1}{2}$ "	G 53904							\$1 00
Magneto trip rod roller, 1 $\frac{1}{8}$ " rd x 1 $\frac{1}{8}$ "	G 5652					\$0 35	\$0 35	35
Magneto trip rod, $\frac{1}{4}$ " sq. x 38 $\frac{1}{2}$ "	G 56544						85	
Movable electrode	G 5854					1 25	1 25	1 25
Igniter finger	G 5855					45	45	45
Igniter finger spring	G 5856					20	20	20
Magneto trip rod, $\frac{1}{4}$ " sq. x 31 $\frac{1}{2}$ "	G 58574					65		
Magneto trip rod lifter, complete	G 7286	\$0 40						
Magneto bracket and igniter frame (complete, \$7 25)	G 7287	2 25						
Lower half of exhaust rod clamp	G 7288	10						
Upper half of exhaust rod clamp	G 7289	10						
Lower half of exhaust rod clamp	G 7381		\$0 10					
Upper half of exhaust rod clamp	G 7382		10					
Magneto trip rod lifter, complete	G 7388		40					
Magneto bracket and igniter frame (complete, \$7 50)	G 7384		2 25	\$2 25	\$2 25			
Magneto trip rod lifter, complete	G 7387			45	45			
Upper half of exhaust rod clamp	G 7388			10	10	10		
Lower half of exhaust rod clamp	G 7389			10	10	10		
Magneto trip rod lifter, complete	G 7407					45		
Magneto bracket and igniter frame (complete, \$7 75)	G 7408					2 50	2 50	2 50
Magneto trip rod lifter, complete	G 7412					50		
Outer half of exhaust rod clamp	G 7415							10
Inner half of exhaust rod clamp	G 7416							10
Magneto trip rod lifter, complete	G 7417							50
Outer half of exhaust rod clamp	G 7424						10	
Inner half of exhaust rod clamp	G 7425						10	
Magneto trip rod roller, 1E" rd. x 1 $\frac{1}{2}$ "	G 8918	30	30	30	30			
Magneto trip rod roller shifter stud, $\frac{1}{8}$ " rd x 2 $\frac{1}{8}$ "	G 8919	25	25	25	25	25	25	25
Adjusting screw, $\frac{1}{4}$ " rd. x 1"	G 8921	10	10	10	10	10	10	10
Igniter finger spring	G 8923	20	20	20	20			
Movable electrode	G 8926	1 00						
Magneto trip roller shifter stud collar	G 8928	15	15	15	15	15	15	15
Igniter finger	G 8930	45	45	45	45			
Magneto trip roller shifter spring	G 8931	05	05	05	05	05	05	05
Magneto trip rod roller shifter	G 8933	25	25	25	25	25	25	25
Magneto trip rod, $\frac{1}{4}$ " sq. x 15 $\frac{1}{2}$ "	G 89344	35						
Magneto trip rod, $\frac{1}{4}$ " sq. x 22"	G 90294		45					
Movable electrode	G 9030		1 25	1 25	1 25			
Magneto trip rod, $\frac{1}{4}$ " sq. x 25 $\frac{1}{2}$ "	G 90314			50				
Magneto trip rod, $\frac{1}{4}$ " sq. x 28 $\frac{1}{2}$ "	G 90324				60			
Additional Parts Required for Attaching Magneto to Engines when in the Field								
Cam gear	GA 400			3 40				
Cam gear	GA 490				3 40			

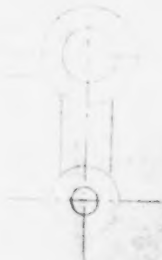




27
for reference of
of the 12th of March

General: 1st of March
1901, 11:00

Thompson
Robertson



EXANE
APRIL 11/1901



62

BILL OF COMPLAINT.

Filed August 21, 1915.

UNITED STATES DISTRICT COURT

Eastern District of South Carolina.

Emil Podlesak, Henry J. Podlesak and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. Letters Patent Re- issue No. 13,878.
—vs— Sumter Electrical Company, <i>Defendant.</i>	

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, in and for the Eastern District of South Carolina:—

Emil Podlesak, a citizen of the United States, and a resident of Racine, Racine County, Wisconsin, Henry J. Podlesak, a citizen of the United States and a resident of Chicago, Cook County, Illinois, and the Webster Electric Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, having its principal place of business at Racine, in the County of Racine and State of Wisconsin, bring this their Bill of Complaint against the Sumter Electrical Company, a corporation organized and existing under and by virtue of the laws of the State of South Carolina and having its principal place of business at Sumter, in the County of Sumter, and State of South Carolina, within the Eastern District of South Carolina; and thereupon your orators complain and say:

63

I.

That heretofore and before the 15th day of April, A. D. 1912, your orator, Emil Podlesak, then a resident of Tiffin, in the County of Seneca, and State of Ohio, was the original, first and sole inventor of a certain new and useful improvement in Current Generator and Igniter for Internal Combustion Engines, fully described in the specifications of the hereinafter mentioned Letters Patent, which invention was not known or used by others in this country or patented or described in any printed publications in this or any foreign

country prior to his invention thereof or more than two years prior to his application for said Letters Patent, had not been in public use or on sale in this country for more than two years prior to said application, had not been abandoned to the public and had not been patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve (12) months prior to the filing of his application for Letters Patent of the United States; that your orator, Emil Podlesak, made due application to the Commissioner of Patents of the United States in accordance with the then existing Acts of Congress, for Letters Patent of the United States for said invention and improvement.

Your orator, Emil Podlesak, having in all respects complied with the conditions and requirements of the said Acts of Congress, on the 14th day of March, A. D. 1913, Letters Patent of the United States No. 1,055,076, signed, sealed and executed in due form of law for the said invention and improvement, were issued and delivered unto your orator, 64 Emil Podlesak, whereby there was granted unto him, the said Emil Podlesak, his heirs and assigns, the sole and exclusive right to make, use and vend the invention set forth, described and claimed therein, for the term of seventeen (17) years from the 4th day of March, A. D. 1913, throughout the United States, and the territories thereof. A printed copy of said patent No. 1,055,076, is hereunto annexed and made a part of this Bill of Complaint.

II.

That the aforesaid Letters Patent No. 1,055,076 were inoperative by reason of a defective and insufficient specification, to fully secure to your orator, Emil Podlesak, the aforesaid invention and improvement, which was described in said Letters Patent and intended to be secured thereby, and that the error in said Letters Patent rendering the same in operative, as aforesaid, arose by inadvertence, accident and mistake, and without any fraudulent or deceptive function on the part of your orator, Emil Podlesak, and that on account of the defects and insufficiencies of said Letters Patent, your orator, Emil Podlesak, made application to the Commissioner of Patents, in accordance with the then existing Acts of Congress, for leave to surrender the said Letters Patent and for the grant to him of new Letters Patent for the same invention in accordance with the amended specifications presented

with said application, and for the unexpired part of the terms of said original Letters Patent, and that thereupon having fully complied with all the conditions and requirements of said Acts of Congress and having paid the fee required by law, leave to surrender said original Letters Patent
65 was duly granted by the Commissioner of Patents, and on the 9th day of February, A. D. 1915, new and re-issued Letters Patent for the same invention and improvement, bearing No. 13,878, signed, sealed and executed in due form of law were issued and delivered unto your orator, Emil Podlesak, for the unexpired term of said original Letters Patent, whereby there was secured unto your orator, this heirs and assigns, for said unexpired term of said original Letters Patent, to-wit: until the expiration of the term of seventeen (17) years from the 4th day of March, A. D. 1913, the sole and exclusive right to make, use and vend throughout the United States and territories thereof, the aforesaid invention and improvement. A printed copy of said reissue Patent No. 13,878 is hereunto annexed and made a part of this, Bill of Complaint.

III.

That heretofore, by instruments in writing duly signed and delivered, the said Emil Podlesak, one of your orators, sold, assigned, and transferred unto Henry J. Podlesak, another of your orators, an undivided interest in the invention disclosed in said reissued Letters Patent No. 13,878, and thereafter said Emil Podlesak and Henry J. Podlesak, by instruments in writing duly executed and delivered, granted unto the said Webster Electric Company a license to make, use and sell the invention described in said reissued Letters Patent No. 13,878, and that your orators are now the sole and exclusive owners of said Letters Patent and are entitled to all of the rights and privileges granted and secured or intended to be granted and secured thereby, and are entitled to all the benefits, damages and moneys that may be recovered for the infringement or violation of said reissued Letters
66 Patent. Proffer is made of said instruments in writing, to be produced in Court when necessary.

IV.

Your orators further say unto your Honors that the Sumter Electrical Company, well knowing the premises and the rights of your orators, with the intent of injuring your ora-

tors and to deprive them of the privileges and advantages which might and otherwise would accrue unto them from their rights in and to said reissued Letters Patent No. 13,878, has within six (6) years prior to the filing of this Bill, since February 9th, 1915, and before the commencement of this suit, unlawfully and without license or allowance by, and against the will of your orators and in infringement of their rights as set forth by said reissued Letters Patent No. 13,878, made, used and sold in the Eastern District of South Carolina and elsewhere in the United States, a Current Generator and Igniter for Internal Combustion Engines constructed in accordance with the disclosures of said reissued Letters Patent No. 13,878, and embodying the invention and improvements set forth, described and claimed therein, and that said Sumter Electrical Company is now continuing so to do and is preparing and threatening so to do in the future, and is preparing, aiding and encouraging others so to do within the Eastern District of South Carolina and elsewhere in the United States, and though requested and warned of your orators' rights in the premises and requested to abstain from and cease its infringing acts and operations, said defendant has disregarded such notices and warnings and has refused to cease its infringing and unauthorized acts, all of which is contrary to equity and good conscience and in 67 violation of your orators' rights, as stated; and, further, that but for said defendant's unlawful and unauthorized acts your orators would still be in the undisturbed possession, use and enjoyment of the exclusive privileges secured to them as owners of said reissued Letters Patent No. 13,878, and in receipt of the profits accruing therefrom, all of which works great and irreparable injury to your orators and to their rights in the premises.

V.

To the end, therefore, that said Sumter Electrical Company may, if it can, show reason why your orators should not have relief, may it please your Honors to bring said defendant, the Sumter Electrical Company, before this Court by process of subpoena, there to make full, true, direct and perfect answer to the certain matters and things herein set forth and charged (though not under oath, same being hereby expressly waived), and that it be decreed to account for and pay over to your orators the income and profits thus unlawfully derived and which might and would otherwise

have been accrued by your orators but for the unlawful and unauthorized acts of said Sumter Electrical Company and that said Sumter Electrical Company be required to produce its full records and accounts of all kinds touching upon and concerning its unlawful and unauthorized acts for the guidance of the Court in determining the amount justly due to your orators in consequence thereof; and, further, that said Sumter Electrical Company may be restrained from any further violation of your orators' rights in the premises, may it please your Honors to grant a writ of injunction issuing from and under the seal of this Honorable Court, perpetually enjoining and restraining said Sumter Electrical Company, its officers, employees, attorneys, agents and representatives of every kind and grade from further manufacture, use or sale in any manner or attempts thereat, or offers, negotiations or encouragements theretowards, in violation of your orators' rights as aforesaid; and for the further protection of their rights, your orators pray that a provisional or temporary injunction be issued, restraining said Sumter Electrical Company, its officers, employees, attorneys, agents or representatives of every kind and grade, from any further infringement of said reissued Letters Patent No. 13,878, pending this cause, and your orators further pray for such other relief as the equities of the case may require and to your Honors may seem meet.

And your orators will ever pray, etc.

(Signed) EMIL PODLESAK

HENRY J. PODLESAK

WEBSTER ELECTRIC COMPANY,

by WALTER BROWN

Vice-President.

SMYTHE & VISANSKA

LYNN A. WILLIAMS,

Solicitors for Plaintiffs.

69 United States of America }
State of Illinois } ss:
County of Cook }

EMIL PODLESAK, being first duly sworn, on oath deposes and says:

That he is one of the plaintiffs named in the foregoing Bill of Complaint; that he has read the foregoing Bill of Complaint subscribed by him, and knows the contents thereof;

that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those he believes it to be true; and that he verily believes that he was the true, original, first and sole inventor of the invention described in the patent referred to in the said Bill.

(Signed) EMIL PODLESAK

Subscribed and sworn to before me this 3rd day of August, A. D. 1915.

(Signed) ALBERT G. MCCALED

(Seal)

Notary Public.

70

SUBPOENA AD RESPONDENDUM.
THE UNITED STATES OF AMERICA,

Eastern District of South Carolina.

In the District Court.

Emil Podlesak, Henry J. Podlesak & Webster Electric Company, <i>Plaintiffs,</i>	} In Equity.
<i>versus</i>	
Sumter Electrical Company, <i>Defendant.</i>	

The President of the United States of America: To Sumter Electrical Company.

You are hereby summoned and required to answer the Bill herein, and to file a copy of your answer or other defense in the Clerk's office twenty days after the service hereof, exclusive of the day of service; and if you fail to answer this Bill within the time aforesaid, the Complainant in this suit will apply to the Court for the relief demanded in the Bill.

Witness, the Honorable Henry A. M. Smith, United States Judge for South Carolina, at Charleston, S. C., this 5th day of August, A. D. 1915.

LYNN A. WILLIAMS,
SMYTHE & VISANSKA,
Complainant's Solicitors.

RICHARD W. HUTSON,
C. D. C. U. S. E. D. S. C.

MEMORANDUM

The Respondent will take notice that he should file his answer or other defense to the Bill herein on or before the twentieth day after the service hereof, exclusive of the day of service; otherwise judgment pro confesso will be taken against him.

RICHARD W. HUTSON,
C. D. C. U. S. E. D. S. C.

(Endorsed) United States of America, Eastern District of South Carolina In the District Court. Emil Podlesak, Henry J. Podlesak & Webster Electric Co. Complainants versus Sumter Electrical Co. Defendants Subpoena ad Respondendum Filed Aug. 21, 1915 Richard W. Hutson C. D. C. U. S. S. C.

71 RETURN ON SERVICE OF WRIT.

United States of America, }
Eastern District of S. C. } ss:

I hereby certify and return that I served the annexed Sub. Ad. Re. on the therein-named Sumter Electrical Co., by handing to and leaving a true and correct copy thereof with C. F. Mason, Manager of the Company, at his office, personally at Sumter in said District on the 25th day of August, A. D. 1915.

JAS. L. SIMS,
U. S. Marshal.

72

UNITED STATES DISTRICT COURT

For the Eastern District of South Carolina

Emil Podlesak, Henry J. Podlesak and Webster Electric Company, <i>Plaintiffs,</i>	} Notice.
<i>versus</i>	
Sumter Electrical Company, <i>Defendant.</i>	

To Messrs. Smythe & Visanska, Complainant's Attorneys:

Please Take Notice, That the order of the Honorable H. A. M. Smith, District Judge for the Eastern District of South Carolina, of the District Court of the United States, has this day been filed in the said Court, extending the time to answer the Bill of Complaint in the above stated case, ten (10) days from the date of the Order, a copy of which Order and of the moving papers is hereto attached, and herewith served upon you.

(Signed) HARMON D. MOISE
Solicitor for the Sumter Electrical Company.

73

UNITED STATES DISTRICT COURT

For the Eastern District of South Carolina.

Emil Podlesak, Henry J. Podlesak and Webster Electric Company, <i>Plaintiffs,</i>	} Order.
<i>vs.</i>	
Sumter Electrical Company, <i>Defendant.</i>	

This is a motion made before me, Ex Parte, to extend the time within which the defendant shall answer the Bill of Complaint herein.

Upon reading and considering the facts stated in the foregoing petition,

It Is Ordered: That the time for answering of the defendant herein be extended ten (10) days from the date of this Order.

(Signed) HENRY A. M. SMITH
U. S. Dist. Judge.
14 Sept. 1915.

74

Copy

RETURN ON SERVICE OF WRIT

United States of America } ss:
Eastn. District of So. Ca. }

Sumter Electrical Co. }
vs. }
Podlesak *et al.* }

I hereby certify that I served the annexed Notice and Order on the therein-named Smythe & Visanska, Attorneys-at-Law, by handing to and leaving a true and correct copy thereof with A. T. Smythe, Esq., member of the firm of Smythe & Visanska, personally at Charleston, in said District on the 14th day of September, 1915.

JAS. L. SIMS,
U. S. Marshal
By N. M. PORTER,
Deputy.

75

UNITED STATES DISTRICT COURT

For the Eastern District of South Carolina.

Emil Podlesak, Henry J. Podlesak }
and Webster Electric Co., }
Plaintiffs, } Petition.
—vs— }
Sumter Electrical Co., }
Defendant. }

To the Honorable Henry A. M. Smith, Judge of the District Court, for the Eastern District of South Carolina:

Now comes the Sumter Electrical Company, the defendant above named and respectfully shows the Court the following:

First: That on or about the 24th day of August, A. D. 1915, plaintiffs herein filed their Bill of Complaint in this Court, against defendant above named and due service of same was made by the Complainant on the 25 day of August, A. D. 1915.

Second: That the time for answering said Bill of Complaint will expire on the 14th day of September, A. D. 1915.

Third: That since the service of said Bill of Complaint and commencement of this section two of the plaintiffs herein, Emil Podlesak and Henry J. Podlesak, by a certain instrument in writing, by them duly executed and delivered, have assigned to the Splitdorf Electrical Company, of Newark, N. J., and Sumter Electrical Company of Sumter, S. C., defendants herein, the entire right, title and interest of said plaintiffs in and to certain United States letters patent, applications and inventions covered thereby, including re-
76 issued letters patent #13878, granted to said plaintiff on the 9th day of February, A. D. 1915, infringement of which is alleged in the Bill of Complaint, as the grounds of this action, a copy of which said instrument is hereto attached and marked "Exhibit A", and made a part hereof.

Third: That the purchase and acquisition by defendant, Sumter Electrical Company, of said plaintiff's rights have been consummated within the last few days, the papers in the said transaction having been duly executed in Washington, D. C., in Sumter, S. C., and Newark, N. J., so that the entire assignment by the plaintiffs aforesaid has only just now been received.

Fourth: That by reason of the foregoing because of this transaction above set forth and the shortness of the time within which answer would have to be made it would be impossible for your petitioner to properly prepare an Answer to the said Bill of Complaint. That the Webster Electric Company owns no interest in the patent, infringement of which is the basis of this action, but are mere licensees, and this action cannot be maintained by them without joining as parties the owners of the patent; that your petitioner, together with the Splitdorf Electric Company, a New Jersey corporation, are, as assignees, co-owners and successors to all the rights of the said plaintiffs in the said patent and are necessary parties to this action; and upon information and belief the Splitdorf Electrical Company is now preparing to intervene, setting up the facts above stated.

Fifth: That application has been made to plaintiffs above named for an extension of the time to answer, but said request has been refused. That this motion is not intended for delay.

77 Wherefore, your petitioner prays that an Order do issue out of this Honorable Court extending the time to an-

swer the Bill of Complaint for ten (10) days from the date of such order.

And your petitioner will ever pray, etc.

(Signed) THE SUMTER ELECTRICAL COMPANY
by HARMON D. MOISE,
Solicitor.

UNITED STATES DISTRICT COURT

Eastern District of South Carolina

Personally appeared before me HARMON D. MOISE, who being duly sworn says that, in the above stated case, for the Defendant, that he has read the foregoing Petition, and that the facts stated therein are true of his own knowledge, except insofar as they are stated upon information and belief, and as such facts so stated, he believes them to be true; that he makes this verification as Attorney for the defendant herein, in which capacity the foregoing facts have come within his knowledge and belief.

Sworn to and subscribed before me this 13 day of Sept., 1915

HARMON D. MOISE.

(Signed) W. TURNER LOGAN,
Notary Public.

S. C. (Seal)

78 File 2425

Memorandum of agreement made and entered into this 4th day of September, A. D. 1915, by and between Emil Podlesak of Racine Wisconsin, and Henry Joseph Podlesak of Chicago, Illinois, parties of the first part, and the Splitdorf Electric Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business located in the City of Newark, County of Essex, in said State, and the Sumter Electrical Company, a corporation organized and existing under the laws of the State of South Carolina, having its principal office and place of business in the City of Sumter, County of Sumter, in said State, said corporations jointly parties of the second part;

Whereas the parties of the first part are the present joint owners of certain inventions relating to inductor electric generators for internal combustion motor ignition, and of certain letters patent granted therefor as follows: No. 947,647,

issued January 25, 1910; No. 948,483, issued February 8, 1910; and 1,003,649, issued September 19, 1911, all for Inductor Generators for Ignition purposes; and of certain other inventions relating to ignition devices for gas engines, for which applications have been filed and letters patent have been granted as follows: No. 1,022,642, issued April 9, 1912, Low Tension Sparking Mechanism; No. 1,055,076, issued March 4, 1913, reissued February 9, 1915, as No. 13,878, for Current Generators and Igniters; No. 1,056,630, issued March 18, 1913, for Inductor Generators for Ignition Purposes; applications serial No. 734,143, filed November 29, 1912, for Igniter Devices for Explosive Engines, patented June 30, 1914, as No. 1,101,956; application serial No. 639,738, filed July 21, 1911, Magneto Machine, patented May 26, 1914, as No. 1,098,052; application serial No. 668,153, filed December 27, 1911, as a division of original application No. 639,738, patented June 2, 1914, as No. 1,098,754; and application serial No. 668,153, filed December 27, 1911, Magneto Machines, patented as No. 1,098,754; and

Whereas said parties of the first part have heretofore granted licenses under said patents to the Webster Electric Company of Racine, Wisconsin, as evidenced by three certain written instruments dated respectively the 5th day of February, 1914, the 5th day of February, 1914, and the 20th day of January, 1915, of which true copies are hereto annexed and marked respectively Exhibits A, B, and C; and

Whereas the parties of the second part having been nominated by F. C. Manning under his option dated August 20, 1915, and being his assignees thereof, are desirous of acquiring the entire interest in the aforesaid inventions, letters patent and applications, together with all rights to manufacture, use and sell said inventions subject only to the said licenses heretofore granted to the Webster Electric Company, also the entire interest of the parties of the first part in the aforesaid agreements with the said Webster Electric Company and in the business of manufacturing and selling magneto ignition apparatus for internal combustion engines, together with the good will appertaining to the said business of the parties of the first part, in part represented by the association of their names or either of them with said business or with apparatus manufactured or to be manufactured and sold under the aforesaid letters patent and applications on said agreements; also all reissues granted or to be granted

or said letters patent and patents granted on said applications, as well as any improvements on said inventions, the applications and patents therefor.

80 File No. 2425

Now therefore be it known that for and in consideration of the sum of Twenty-five Thousand Dollars (\$25,000.00) to them in hand paid, the receipt of which is hereby acknowledged, and for the further considerations hereinafter set forth the parties of the first part have sold, assigned, transferred set over and conveyed, and by these presents do hereby sell, assign, transfer, set over and convey unto the parties of th second part jointly, the entire right, title and interest in, to and under each and every the hereinbefore mentioned inventions and improvements, letters patent, and applications thereof, including the right to sue and recover to their own use for infringement of the same, whether committed before or after the date hereof, this assignment being subject only to the licenses heretofore granted to the Webster Electric Company; also the entire right, title and interest in, to and under or arising out of the aforesaid license agreements with the Webster Electric Company, and the royalties and other profits flowing therefrom after the date hereof, as well as the entire interest and goodwill of the parties of the first part in the business of manufacturing and selling magneto ignition apparatus for internal combustion engines and any other apparatus described or claimed in said letters patent and applications and included in said license agreements; the same to be held and enjoyed by the said parties of the second part, or the survivor of them, their or its successors or assigns, as fully, freely and entirely as they might have been held and enjoyed by the parties of the first part had not this assignment and sale thereof been made.

81 File 2425.

It is understood and agreed that the preparation and the prosecution of all applications for patents on inventions hereby conveyed or agreed to be conveyed, including both pending and new applications, original, divisional, reissue, and extension, shall be the attorney or attorneys for the parties of the second part, on their designation, and the parties of the first part hereby appoint said attorneys as their attorneys for such purpose, and agree that they will at all times keep the parties of the second part or their said attorneys fully informed as to inventions they may make

which might fall within the terms of this agreement, and that they will at all times aid and assist in the preparation and prosecution of said applications, and in any proceedings ancillary thereto all, however, without expense to themselves for costs or attorneys' fees, said expense to be borne entirely by the parties of the second part. The parties of the first part also agree that upon demand of the parties of the second part or said designated attorneys, they will execute assignments satisfactory to said attorneys of all said inventions and improvements not herein specifically designated but included within the scope hereof.

In further consideration of the said transfer and the faithful performance by the parties of the second part of the covenants herein contained, the parties of the second part for themselves, their survivor, successors or assigns, agree to pay an additional sum of Forty Thousand Dollars (\$40,000.00) in four equal installments of Ten Thousand Dollars (\$10,000.00) each, payable one installment on the first day of October of each of the years 1916, 1917, 1918 and 1919.

82 File No. 2425.

In further consideration of the payment to them made which includes a special sum of Five Thousand Dollars (\$5,000.00) for this purpose, which said sum is deemed by the parties hereto to be adequate in the premises, and as ancillary to the foregoing assignment and sale, and in order to protect the parties of the second part, their survivor, successors and assigns in the full and complete realization and enjoyment of the rights, title and interest thus conveyed, the parties of the first part do hereby jointly and severally covenant and agree that they and each of them shall not engage in the manufacture or sale of magneto ignition apparatus for internal combustion engines for and during the period of five years from and after the date of these presents, throughout the territory covered and included within the monopoly granted by the aforesaid letters patent, it being the intention of the parties hereto that the field of business of the parties of the second part includes the whole of and is coextensive with said territory.

It is understood and agreed that no thing in this covenant shall operate to prevent the parties of the first part from engaging in business involving either the use of a magneto generator for other purposes than internal combustion engine ignition, or involving the accomplishment of internal combustion engine ignition by other means than magneto gener-

ator or dynamo; provided said business does not involve any infringement upon any claims of the patents hereby assigned or agreed to be assigned to the parties of the second part, the validity of which is expressly admitted and warranted by the parties of the first part. It is further understood and agreed that in the event of any breach of this covenant not to complete by the parties of the first part or either of them, they shall thereupon become jointly and severally liable to

83 File No. 2425.

the parties of the second part in the sum of Five Thousand Dollars (\$5,000.00) as liquidated damages, and in addition thereto for all actual damages in excess thereto, sustained by the said parties of the second part, their survivor, successors or assignes, by reason of said breach, such damage to be assessed and determined by a court of proper jurisdiction and pending such determination all sums remaining in the hands of the parties of the second part and which would otherwise be due and payable under this agreement to the parties of the second part as security for the payment of the aforesaid damages

The parties of the first part hereby warrant that they have the right to manufacture, use and sell the inventions described and claimed in letters patent No. 1,022,642, April 9, 1912; No. 1,055,076, March 4, 1913, reissued February 9, 1915, as No. 13,878, and 1,056,360, March 18, 1913, also applications serial No. 734,143, filed November 29, 1912, serial No. 668,153, filed December 27, 1911, and serial No. 639,738, filed July 21, 1911; that they are the owners of the said letters patent, and also of all the other letters patent and inventions mentioned in the aforesaid agreements with the Webster Electric Company, Exhibits A, B, and C; that they have the right to make this assignment, including all of said patents and agreements; that they have not previously made any assignment or granted any license, shop right or other rights of any kind or character, of, to, in or under the aforesaid patents, saving and excepting only the rights granted under agreements Exhibits A and B to the Webster Electric Company, and that when they made and entered into said agreements with the said Webster Electric Company, it was understood and agreed on the part of the Webster Electric

84 Company that the parties of the first part hereto reserved and retained to and in themselves all the rights, title and interest herein and hereby warranted and that

the same were assignable by the parties of the first part at their own will and pleasure.

It is understood and agreed that this contract is made under and to be construed according to the laws of the State of New Jersey, and is fully executed and delivered in the City of Newark, in said State.

In Witness Whereof, the parties of the first part have hereunto severally subscribed their names and affixed their seals in triplicate this 4th day of September, A. D. 1915; and the parties of the second part have severally caused their names to be signed and their corporate seals to be affixed hereto at the times and places indicated below, by their respective officers to that end duly empowered.

85

UNITED STATES DISTRICT COURT

For the Eastern District of South Carolina.

Emil Podlesak, Henry J. Podlesak and Webster Electric Company,	} <i>Plaintiffs,</i>
<i>vs.</i>	
Sumter Electrical Company,	
	} <i>Defendant.</i>

ORDER OF DISCONTINUANCE.

On motion of Messrs. Smythe & Visanska and Williams & Bradbury, counsel for plaintiffs herein, and with the consent of Messrs. H. D. Moise and J. I. Cosgrove, of counsel for defendant:

It Is Ordered that this case be and the same is hereby discontinued, without prejudice to the rights of any of the parties hereto, upon payment by complainant of all costs.

(Signed) HENRY A. M. SMITH

U. S. Dist. Judge

23d Sept., 1915

We consent:

(Signed) H. D. MOISE,

Solr. for Sumter Electrical Company

JOHN I. COSGROVE,

Atty. for Splitdorf Electrical Company.

SMYTHE & VISANSKA,

Of Counsel for Webster Electric Company.

EDWARD C. CLEMENT,

Counsel for Defdts.

86 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Eastern District of South Carolina.

In Equity.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify, that the foregoing transcript is a true and correct copy of the original record in the case of Emil Podlesak, et al., Complainants against Sumter Electrical Company, Defendant, the original of which is now on file and of record in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 7th day of December, 1918.

RICHARD W. HUTSON,
C. D. C. U. S. E. D. S. C.

(Seal)

87 (Endorsed) E. Docket No. 157 United States of America Eastern District of South Carolina In the District Court Emil Podlesak, et al. Complainants. against Sumter Electrical Co. Defendants. Certified Copy of Record.

Case 46a Oscillogram of Current Curve Plaintiff's Device

← 1 inch = .0274 Sec.

↑ 1 inch = .0385 Amps.
 1831 Amps.

72.0



-3

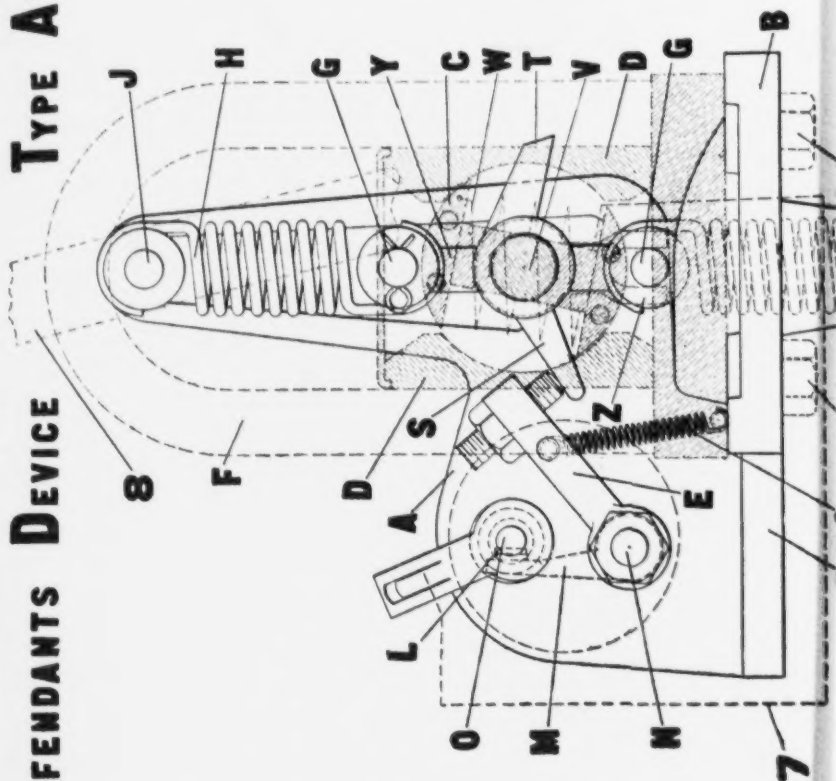
P 1 C

WESTER ELECTRIC CO.
 CHICAGO, ILL.
 DATE: 8/1/18
 J. H. H.

.0025 Sec.

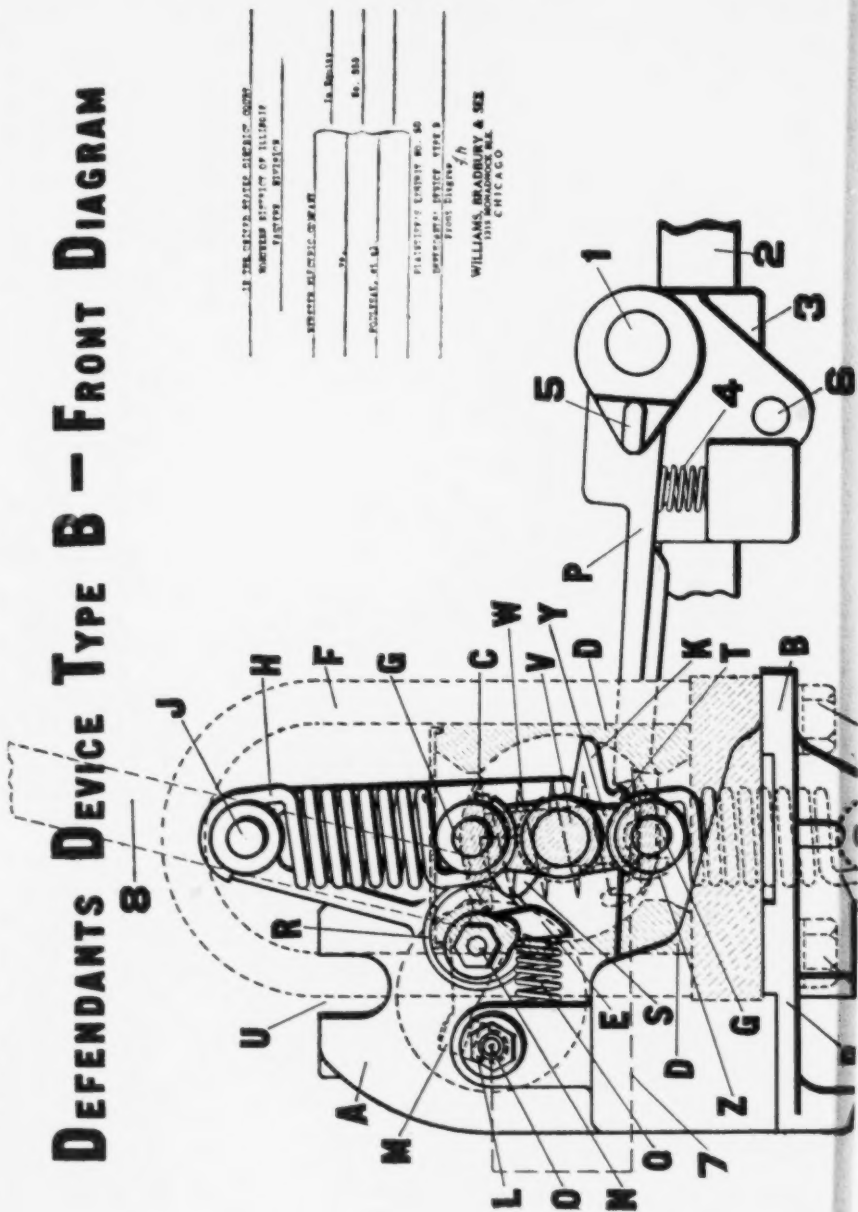


DEFENDANTS **DEVICE** **TYPE** **A-FRONT** **DIAGRAM**

[illegible]

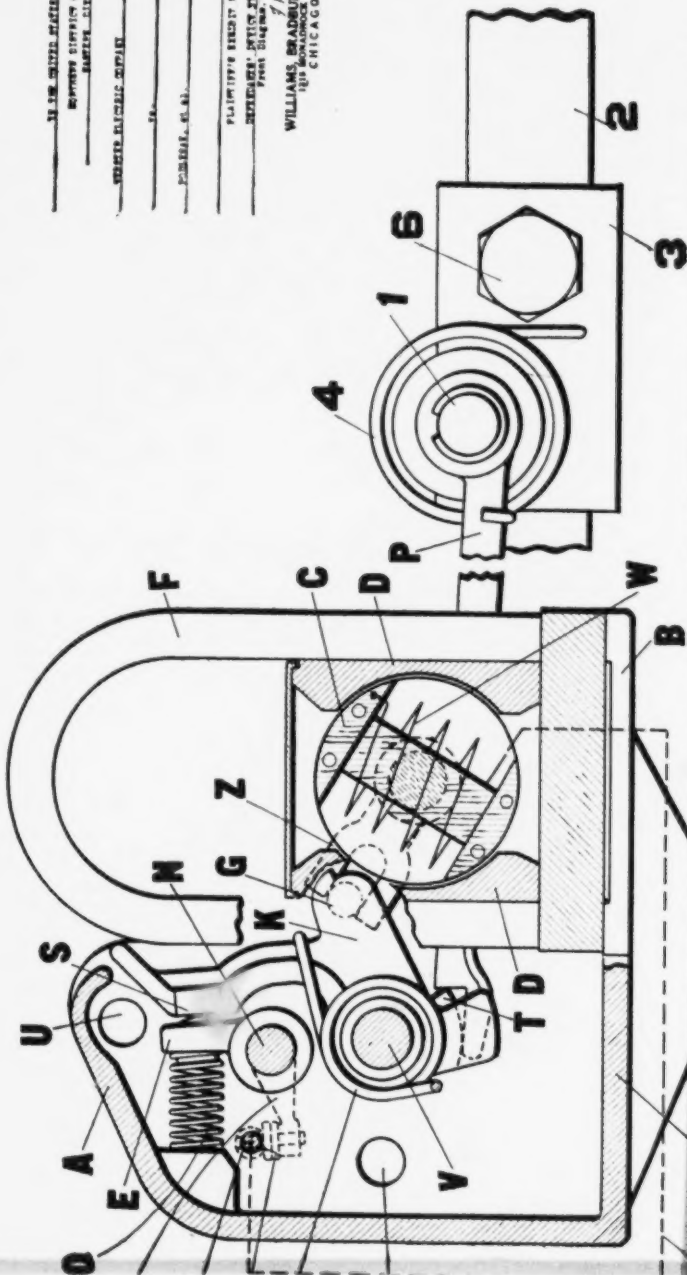


DEFENDANTS DEVICE TYPE B - FRONT DIAGRAM





DEFENDANTS DEVICE TYPE C-FRONT DIAGRAM

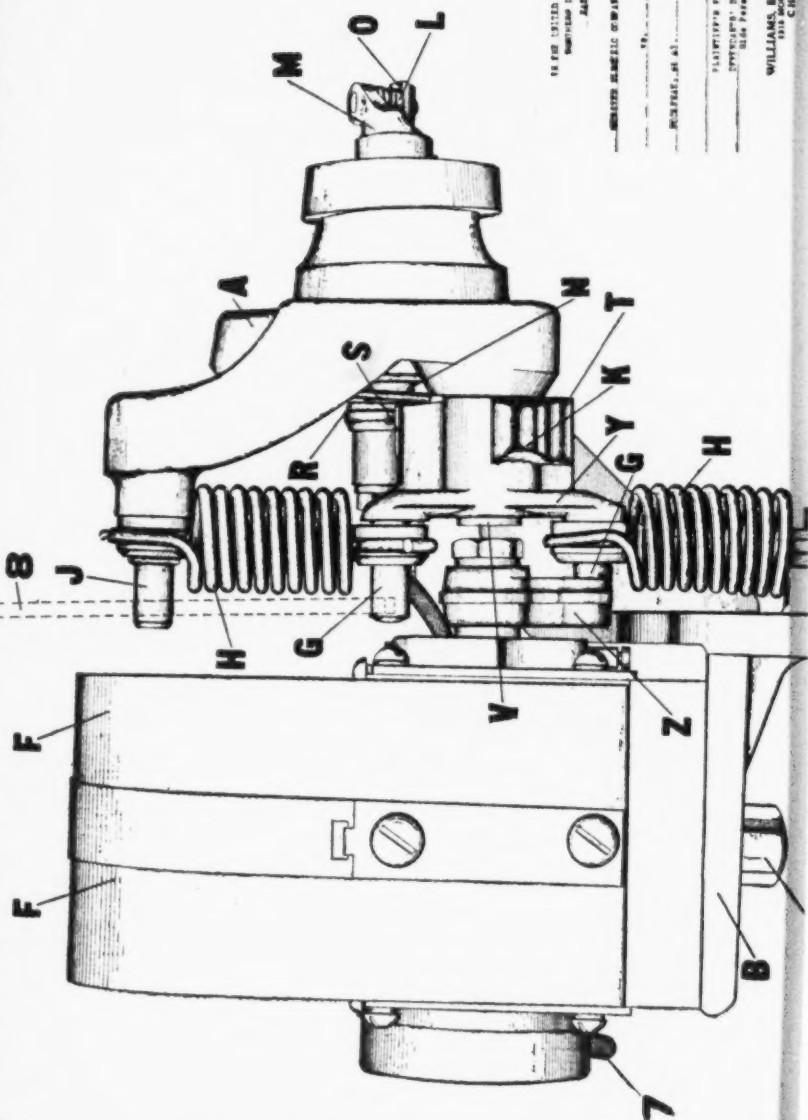




DEFENDANTS DEVICE TYPE B-SIDE PERSPECTIVE

Plaintiff's Exhibit 52.

57



IN FOR UNITED STATES MARSHAL SERVICE
NORTHERN DISTRICT OF ILLINOIS
JANUARY DIVISION

RECEIVED JUNE 10 1971

U.S. MARSHAL

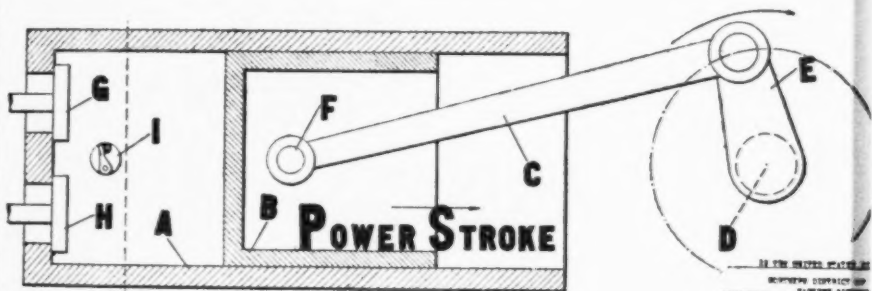
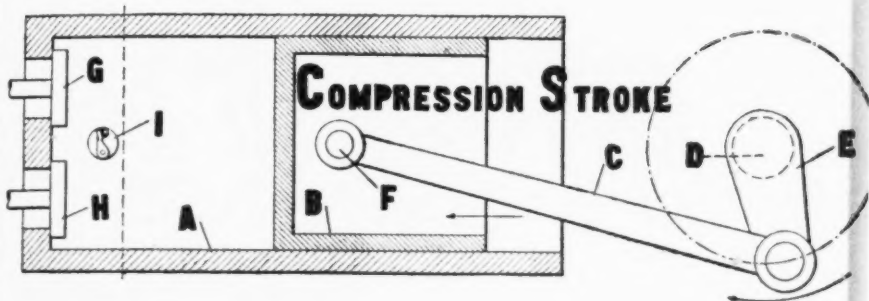
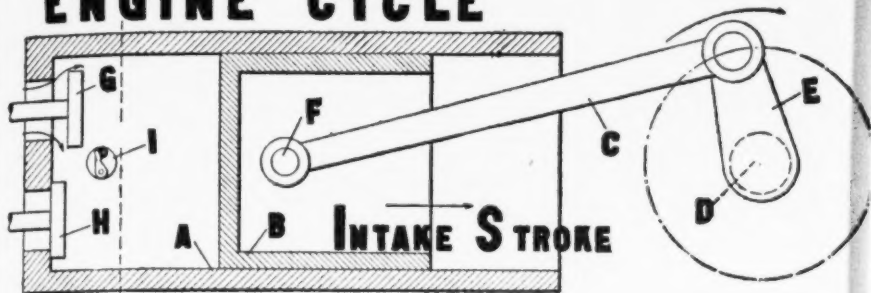
RECEIVED JUNE 10 1971

PLAINTIFFS EXHIBIT NO. 52
OFFICIALS' REPORT 1971.9
SIDE PERSPECTIVE

WILLIAMS BRADLEY & SEE
ATTORNEYS AT LAW
CHICAGO



ENGINE CYCLE



BE THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF STANDARDS

OFFICE OF THE SECRETARY

WASHINGTON, D. C.

PLATE NO. 55

PLATE NO. 55

WILLIAMS, MACHINERY

1510 WASHINGTON ST.
CHICAGO, ILL.



*Defendant's Device
Typed: Right Side*

Ex. 56

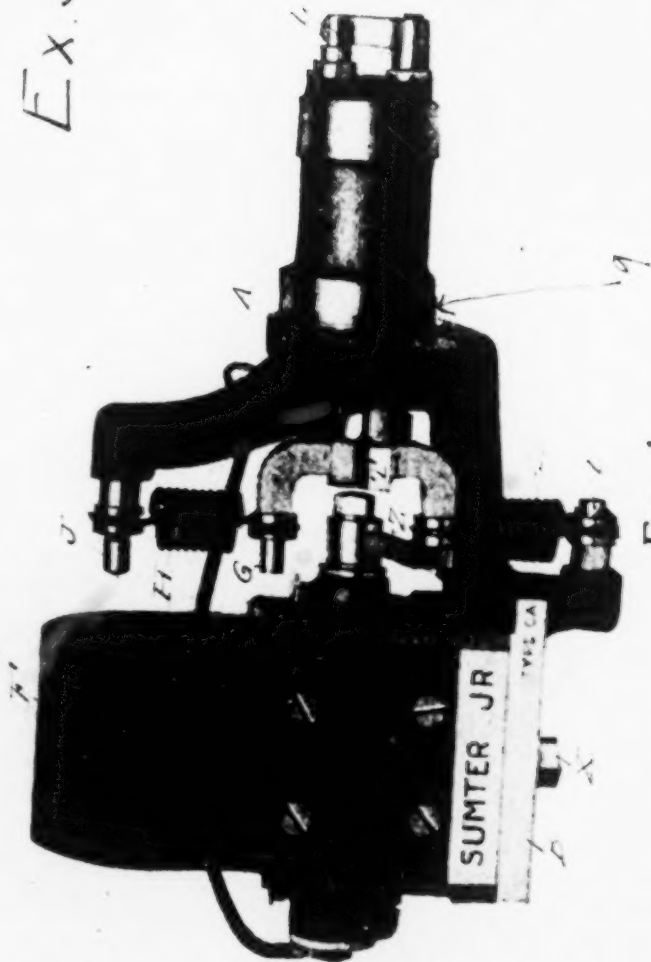


FIG. 1

94

PLAINTIFF'S EXHIBIT 59.

UNITED STATES DISTRICT COURT

Eastern District of Michigan

Southern Division.

Emil Podlesak,	} Equity No. 112. Letters Patent Reissue No. 13,878.
<i>vs.</i>	
Alamo Manufacturing Co.,	
<i>Defendant.</i>	

THE ANSWERS OF EMIL PODLESAK, PLAINTIFF,
TO CERTAIN OF THE DEFENDANT'S INTERROGA-
TORIES, DATED APRIL 21, 1915.

County of Racine }
State of Wisconsin. } ss:

EMIL PODLESAK, the plaintiff in the above entitled cause, being first duly sworn, on oath deposes and says in answer to certain of the defendant's Interrogatories, dated April 21, 1915, as follows:—

Interrogatory No. 1. What particular claims of Reissue Patent No. 13,878 are alleged by plaintiff to have been infringed by defendant?

Answer: As at present advised, Claims 19 and 21.

Interrogatory No. 2. Is the alleged infringement by reason of manufacture, or by reason of sale, or by reason of use?

Answer: As at present advised, by reason of sale.

Interrogatory No. 13. When did plaintiff first learn of the structure complained of in the Bill of Complaint,

Answer: In January, 1915.

Interrogatory No. 14. When, subsequent to March 4, 1913, did plaintiff first read the claims of Letters Patent No. 1,055,076 which is the original patent upon which Reissue No. 13,878 is based?

Answer: I do not remember exactly but I began the consideration of the necessity for the reissue of Letters Patent No. 1,055,076 sometime between August 15 and September 15, 1914, and I believe that I first read the claims of original Let-

Plaintiff's Exhibit 59.

ters Patent No. 1,055,076 between the 15th of August and the 15th of September 1914, I am certain that I had not read them except in a cursory way prior to that period.

Interrogatory No. 16. Is the Webster Electric Company, of Racine, Wisconsin, an exclusive, or any licensee, under Reissue Patent No. 13,878? If not, exactly what interest in or under said Letters Patent does the said Webster Electric Company possess?

Answer: Yes.

EMIL PODLESAK.

Plaintiff.

Subscribed and sworn to before me this 11th day of June A. D. 1915.

FRED H. SCHULTZ,
Notary Public
Racine Co. Wis.

Seal.

My Commission expires Aug. 8th, 1915.

Filed June 14, 1915.

ELMER W. VOORHEIS,
Clerk.

96 United States of America, }
Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of The Answers of Emil Podlesak, Plaintiff, to certain of the Defendant's Interrogatories, Dated April 21, 1915, in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,
Clerk.

(Seal)

(Endorsed) No. 112. The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Plaintiff's answer to certain of Def's interrogatories. Filed June 14, 1915. Elmer W. Voorheis, Clerk.

97

UNITED STATES DISTRICT COURT.

Eastern District of Michigan

Southern Division.

Emil Podlesak, Henry J. Podlesak and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. Letters Patent Reissue No. 13878.
<i>vs.</i>	
Alamo Manufacturing Company, <i>Defendant.</i>	

AMENDED BILL OF COMPLAINT.

To the Honorable Judges of the District Court of the United States, in and for the Eastern District of Michigan, Southern Division:

EMIL PODLESACK, a citizen of the United States, and a resident of Racine, Racine County, Wisconsin, Henry J. Podlesak, a citizen of the United States and a resident of Chicago, Cook County, Illinois, and the Webster Electric Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, having its principal place of business at Racine, in the County of Racine and State of Wisconsin, bring this their Bill of Complaint against the Alamo Manufacturing Co., a corporation organized and existing under and by virtue of the laws of the State of Michigan and having its principal place of business at Hillsdale, in the County of Hillsdale and State of Michigan, within the Southern Division of the Eastern District of Michigan, and thereupon your orators complain and say:—

I.

That heretofore and before the 15th day of April, A. D. 1912, your orator, Emil Podlesak, then a resident of Tiffin, in the County of Seneca, and State of Ohio, was the original, first and sole inventor of a certain new and useful improvement in Current Generator and Igniter for Internal
98 Combustion Engines, fully described in the specifications of the hereinafter mentioned Letters Patent, which invention was not known or used by others in this country or

patented or described in any printed publications in this or any foreign country prior to his invention thereof or more than two years prior to his application for said Letters Patent, had not been in public use or on sale in this country for more than two years prior to said application, had not been abandoned to the public and had not been patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve (12) months prior to the filing of his application for Letters Patent of the United States; that your orator, Emil Podlesak, made due application to the Commissioner of Patents of the United States in accordance with the then existing Acts of Congress, for Letters Patent of the United States for said invention and improvement.

Your orator, Emil Podlesak, having in all respects complied with the conditions and requirements of the said Acts of Congress, on the 14th day of March, A. D. 1913, Letters Patent of the United States No. 1,055,076, signed, sealed and executed in due form of law for the said invention and improvement, were issued and delivered unto your orator, Emil Podlesak, whereby there was granted unto him, the said Emil Podlesak, his heirs and assigns, the sole and exclusive right to make, use and vend the invention set forth, described and claimed therein, for the term of seventeen (17) years from the 4th day of March, A. D. 1913, throughout the United States, and the territories thereof. A printed copy of said patent No. 1,055,076 is hereunto annexed and made a part of this Bill of Complaint.

II.

That the aforesaid Letters Patent No. 1,055,076 were inoperative by reason of a defective and insufficient specification, to fully secure to your orator, Emil Podlesak, the aforesaid invention and improvement which was described in
99 said Letters Patent and intended to be secured thereby and that the error in said Letters Patent rendering the same inoperative, as aforesaid, arose by inadvertence accident and mistake, and without any fraudulent or deceptive intention on the part of your orator, Emil Podlesak, and that on account of the defects and insufficiencies of said Letters Patent, your orator, Emil Podlesak, made application to the Commissioner of Patents, in accordance with the then existing Acts of Congress, for leave to surrender the said

Letters Patent and for the grant to him of new Letters Patent for the same invention in accordance with the amended specifications presented with said application, and for the unexpired part of the term of said original Letters Patent, and that thereupon having fully complied with all the conditions and requirements of said Acts of Congress and having paid the fee required by law, leave to surrender said original Letters Patent was duly granted by the Commissioner of Patents, and on the 9th day of February, A. D. 1915, new and reissued Letters Patent for the same invention and improvement bearing No. 13,878, signed, sealed and executed in due form of law were issued and delivered unto your orator, Emil Podlesak, for the unexpired term of said original Letters Patent, whereby there was secured unto your orator, his heirs and assigns, for said unexpired term of said original Letters Patent, to-wit: until the expiration of the term of seventeen (17) years from the 4th day of March, A. D. 1913, the sale and exclusive right to make, use and vend throughout the United States and territories thereof, the aforesaid invention and improvement. A printed copy of said reissue Patent No. 13,878 is hereunto annexed and made a part of this Bill of Complaint.

III.

That heretofore, by instruments in writing duly signed and delivered, the said Emil Podlesak, one of your orators, sold, assigned and transferred unto Henry J. Podlesak, another of your orators, an undivided interest in the invention disclosed in said reissued Letters Patent No. 13,878, and 100 thereafter said Emil Podlesak and Henry J. Podlesak, by instruments in writing duly executed and delivered, granted unto the said Webster Electric Company a shop right license to make, use and sell the invention described in said reissued Letters Patent No. 13,878, and that your orators are now the sole and exclusive owners of said Letters Patent and are entitled to all of the rights and privileges granted and secured or intended to be granted and secured thereby, and are entitled to all the benefits, damages and moneys that may be recovered for the infringement or violation of said reissued Letters Patent. Proffer is made of said instruments in writing, to be produced in court when necessary.

IV.

Your orators further say unto your Honors that the Alamo Manufacturing Co., well knowing the premises and the rights of your orators, with the intent of injuring your orators and to deprive them of the privileges and advantages which might and otherwise would accrue unto them from their rights in and to said reissued Letters Patent No. 13,878, has within six (6) years prior to the filing of this Bill, since February 9th, 1915, and before the commencement of this suit, unlawfully and without license or allowance by, and against the will of your orators and in infringement of their rights as set forth by said reissued Letters Patent No. 13,878, made, used and sold in the Southern Division of the Eastern District of Michigan and elsewhere in the United States a Current Generator and Igniter for Internal Combustion Engines constructed in accordance with the disclosures of said reissued Letters Patent No. 13,878, and embodying the invention and improvements set forth, described and claimed therein, and that the said Alamo Manufacturing Co., is now continuing so to do and is preparing and threatening so to do in the future and is preparing, aiding and encouraging others so to do within the Southern Division of the Eastern District of Michigan and elsewhere in the United States and though requested and warned of your orators' rights in 101 the premises and requested to abstain from and cease its infringing acts and operations, said defendant has disregarded such notices and warnings and has refused to cease its infringing and unauthorized acts, all of which is contrary to equity and good conscience and in violation of your orators' rights, as stated, and, further, that but for said defendant's unlawful and unauthorized acts, your orators would still be in the undisturbed possession, use and enjoyment of the exclusive privileges secured to them as owners of said reissued Letters Patent No. 13,878, and in receipt of the profits accruing therefrom, all of which works great and irreparable injury to your orators and to their rights in the premises.

V.

To the end, therefore, that said the Alamo Manufacturing Co., may, if it can, show reason why your orators should not have relief, may it please your Honors to bring said defendant, the Alamo Manufacturing Co., before this court by proc-

ess of subpoena, there to make full, true, direct and perfect answer to the certain matters and things herein set forth and charged (though not under oath, same being hereby expressly waived), and that it be decreed to account for and pay over to your orators the income and profits thus unlawfully derived and which might and would otherwise have been accrued by your orators but for the unlawful and unauthorized acts of said the Alamo Manufacturing Co., and that said the Alamo Manufacturing Co. be required to produce its full records and accounts of all kinds touching upon and concerning its unlawful and unauthorized acts for the guidance of the Court in determining the amount justly due to your orators in consequence thereof; and further, that said the Alamo Manufacturing Co. may be restrained from any further violation of your orators' rights in the premises, may it please your Honors to grant a writ of injunction issuing from and under the seal of this Honorable Court perpetually enjoining and restraining said the Alamo Manufacturing Co.,

its officers, employees, attorneys, agents and representatives of every kind and grade from further manufacture, use or sale in any manner or attempts thereat, or offers, negotiations or encouragement theretowards in violation of your orators' rights as aforesaid; and for the further protection of their rights, your orators pray that a provisional or temporary injunction be issued, restraining said the Alamo Manufacturing Co., its officers, employees, attorneys, agents or representatives of every kind and grade, from any further infringement of said reissued Letters Patent No. 13,878, pending this cause, and your orators further pray for such other relief as the equities of the case may require and to your Honors may seem meet.

And your orators will ever pray etc.,

EMIL PODLESAK

HENRY J. PODLESAK

WEBSTER ELECTRIC COMPANY,

By T. K. WEBSTER,

President.

LYNN A. WILLIAMS

Solicitor for Plaintiffs.

103 United States of America }
State of Wisconsin, } ss.
County of Racine.

EMIL PODLESACK, being first duly sworn, on oath deposes and says:—

That he is one of the plaintiffs named in the foregoing Bill of Complaint; that he has read the foregoing Bill of Complaint; subscribed by him, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those he believes it to be true; and that he verily believes that he was the true, original, first and sole inventor of the invention described in the patent referred to in the said Bill.

EMIL PODLESACK.

Subscribed to and sworn to before me this 11th day of June, A. D. 1915.

FRED. H. SCHULTZ,

Seal Notary Public Racine Co. Wis.

My Commission expires August 8th, 1915.

Filed June 14, 1915. Elmer W. Voorheis, Clerk.

104 United States of America, }
Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Amended Bill of Complaint in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesack vs. Alamo Mfg. Co. Certified Copy of Amended Bill of Complaint. Filed June 14, 15. Elmer W. Voorheis, Clerk.

105 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan,

Southern Division.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. 112, On Re-issue Letters Patent No. 13,878.
<i>vs.</i> Alamo Manufacturing Company, <i>Defendant.</i>	

MOTION TO DISMISS.

Comes now the above-named Alamo Manufacturing Company, Defendant, and shows this Honorable Court:

1. That the amended bill and amended answer have been filed; that certain interrogatories have been propounded to the defendant by the plaintiffs, and have been duly answered; that certain interrogatories have been propounded to the plaintiffs severally by the defendant; that the interrogatories propounded to the plaintiff Emil Podlesak and to the plaintiff Webster Electric Company have been answered; that it was stipulated by and between counsel for the plaintiffs and defendant that the interrogatories propounded to the plaintiff Henry J. Podlesak should be answered by August 23, 1915; that the plaintiff Henry J. Podlesak has not even to this date answered such interrogatories; that the bill shows on its face that at the time of the filing of the bill said plaintiff Henry J. Podlesak was alleged to be the owner of an undivided interest in the re-issue Letters Patent No. 13,878, involved in this cause, and the plaintiff Webster Electric Company was alleged to be a mere licensee, operating under a license from its co-plaintiffs Emil Podlesak and Henry J. Podlesak.

2. That on the fourth day of September, 1915, the plaintiffs Emil Podlesak and Henry J. Podlesak, by an instrument in writing for a good and valuable consideration, did sell, assign, transfer, set over, and convey unto the Splitdorf Electric Company a corporation organized and existing under the laws of the State of New Jersey, having its principle office and place of business located in the city of Newark, County of Essex, in said state of New Jersey, and the Sum-

ter Electrical Company, a corporation organized and existing under the laws of the state of South Carolina, having its principal office and place of business in the City of Sumter County of Sumter, in said state of South Carolina, the entire right, title and interest in, to, and under the re-issue Letters Patent No. 13,878, alleged by the bill herein to be infringed by the defendant herein, together with the right to use and recover for their own use for infringement of the same, whether committed before or after the date of such assignment, a certified copy of which assignment is ready here in Court to be produced; by which assignment the said Emil Podlesak and Henry J. Podlesak became divested of all right in and to said re-issue Letters Patent No. 13,878, and of all right to prosecute this cause, and the said Splitdorf Electric Company and the said Sumter Electrical Company became necessary parties plaintiff to his cause; and that the said Splitdorf Electric Company and the said Sumter Electrical Company have not been joined as parties plaintiff to this cause.

Wherefore the defendant humbly prays, that the plaintiffs' bill in this cause may stand dismissed out of this Court, with costs to be taxed against the plaintiffs by the Clerk of this Court.

ALAMO MANUFACTURING COMPANY,

By G. B. SCHLEY,

Of Counsel for Defendant.

Indianapolis, Ind.,

November 22, 1915.

Filed November 29, 1915. Elmer W. Voorheis, Clerk. By Carrie Davison Dep Clk.

107 United States of America, }
 Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Motion to Dismiss. in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand

nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Motion to Dismiss. Filed Nov. 29, 1915. Elmer W. Voorheis, Clerk.

108 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan

Southern Division.

Emil Podlesak, Henry J. Podlesak,
and Webster Electric Company,
Plaintiffs,

vs.

Alamo Manufacturing Company,
Defendant.

In Equity No. 112,
On Re-issue Let-
ters Patent
No. 13,878.

MOTION TO AMEND THE ANSWER.

Now comes the defendant, Alamo Manufacturing Company, herein and moves this Honorable Court for leave to amend its amended answer by re-numbering paragraph 14 thereof as 15, and by inserting the following as paragraph 14:

14. Defendant, further answering, alleges on information and belief that on the fourth day of September, 1915, the plaintiffs Emil Podlesak and Henry J. Podlesak, by an instrument in writing for a good and valuable consideration, did sell assign, transfer, set over, and convey unto the Splitdorf Electric Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business located in the City of Newark, County of Essex, in said state of New Jersey, and the Sumter Electrical Company, a corporation organized and existing under the laws of the state of South Carolina, having its principal office and place of business in the city of Sumter, County of Sumter, in said state of South Carolina, the entire right, title, and interest in, to and under the re-issue Letters

Patent No. 13,878, alleged by the bill herein to be infringed by the defendant herein, together with the right to use and recover for their own use for infringement of the same, whether committed before or after the date of such assignment, a certified copy of which assignment is ready here in court to be produced, by which assignment the plaintiffs Emil and Henry J. Podlesak became divested of all right to prosecute this suit and the said Splittorf Electric Company and the Sumter Electric Company became necessary parties plaintiff.

ALAMO MANUFACTURING COMPANY
By G. B. SCHLEY,
Of Counsel for Defendant.

Indianapolis, Ind., Nov. 22, 1915

GBS/LB

Filed November 29, 1915. Elmer W. Voorheis, Clerk. By Carrie Davison Dep Clk.

110 United States of America, }
Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Motion to amend the answer in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen and of the independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,
Clerk.

(Seal)

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Notice to Amend the Answer. Filed Nov. 29, 1915. Elmer D. Voorheis, Clk.

112 At a Session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District, on Monday the Twenty-ninth day of November, in the year of our Lord one thousand nine hundred and fifteen.

Present:—The Honorable Arthur J. Tuttle, United States District Judge.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity. No. 112, On Re-issue Let- ters Patent No. 13,878.
<i>vs.</i> Alamo Manufacturing Company, <i>Defendant.</i>	

This cause coming on to be heard this 29th day of November, 1915, upon defendant's Motion for Leave to Amend its Answer, and upon defendant's Motion to Dismiss the Bill, and the Court having heard the arguments of counsel for the respective parties upon the aforesaid matters and having been fully advised in the premises it is Ordered

1. That defendant have leave to amend its answer as set forth in its motion to amend such answer.

2. That the plaintiffs have until December 13, 1915, to answer the motion to dismiss filed by the defendant.

3. That the plaintiff, Henry J. Podlesak, answer on or before December 13, 1915, the interrogatories propounded to him by the defendant.

4. That either party may upon notice set for trial on any Monday after December 13, 1915, the questions raised by the aforesaid motion to dismiss.

ARTHUR J. TUTTLE
United States District Judge.

Approved as to form
LYNN A. WILLIAMS,
For Plaintiffs.
G. B. SCHLEY,
For Defendant.

Filed Nov. 29, 1915, Elmer W. Voorheis, Clerk.

112 United States of America, }
 Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Order Granting Defendant's Motion for Leave to Amend Answer in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Order Granting Defendant's Motion for Leave to Amend Answer. Filed Nov. 29, 1915. Elmer W. Voorheis, Clerk.

113 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan

Southern Division

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company,	} In Equity No. 112, On Re-issue Let- ters Patent No. 13,878.
<i>Plaintiffs,</i>	
<i>vs.</i>	
Alamo Manufacturing Company,	}
<i>Defendant.</i>	

MOTION.

Now comes the plaintiffs herein by their solicitor and counselor and move this honorable court for an order granting the plaintiffs one weeks time within which to take the deposition of Henry J. Podlesak upon the questions propounded by the

defendant in its interrogatories addressed to the said Henry J. Podlesak, plaintiff, and heretofore filed herein.

This Motion is based upon the record and upon the affidavit of Lynn A. Williams.

LYNN A. WILLIAMS,
Solicitor and Counselor for Plaintiffs.

Filed Dec. 13, 1915. Elmer W. Voorheis, Clerk.

114 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan,

Southern Division

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. 112, On Re-issue Let- ters Patent No. 13,878.
<i>vs.</i> Alamo Manufacturing Company, <i>Defendant.</i>	

AFFIDAVIT OF LYNN A. WILLIAMS.

County of Cook, }
State of Illinois. } ss.

LYNN A. WILLIAMS, being first duly sworn on oath deposes and says that I am the attorney for Webster Electric Company or Solicitor and Counselor for the Plaintiffs in the above entitled suit.

Promptly after the Defendants' interrogatories addressed to Henry J. Podlesak, were filed herein, I requested the said Henry J. Podlesak to prepare sworn answers to the said interrogatories. After making the same request several times orally, I wrote to Henry J. Podlesak demanding that he answer the said interrogatories, and for this purpose I prepared and furnished him with a set of answers to the said interrogatories, the said answers being prepared in accordance with the best of my information as to the matters covered by the interrogatories, I requested, demanding of the said Henry J. Podlesak on behalf of the Webster Electric Company that he execute the answers to the interrogatories thus prepared by me, or that he correct the answers to cover

with the facts as he knew them, provided the answers prepared by me were not correct in any particular.

115 The said Henry J. Podlesak has thus far neglected and failed to prepare or execute answers to the said interrogatories.

I make this affidavit in support of the Plaintiff's motion for leave and time to take the deposition of the said Henry J. Podlesak on the matters inquired of in the interrogatories in question.

LYNN A. WILLIAMS.

Subscribed and sworn to before me this 10th day of December, 1915.

MARY A. COOK,
Notary Public.

Notary Seal

Filed December 13, 1915. Elmer W. Voorheis, Clerk.

116 United States of America, { ss.
Eastern District of Michigan. }

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Motion to Take Depositions and Affidavits of Lynn A. Williams in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Motion to Take Depositions and Affidavit of Lynn A. Williams. Filed Dec. 13, 1915. Elmer W. Voorheis, Clerk.

117 At A Session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District, on Monday the Thirteenth day of December, in the year of our Lord one thousand nine hundred and fifteen.

Present:—The Honorable Arthur J. Tuttle, United States District Judge.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. 112. On Re-issue Let- ters Patent No. 13,878.
<i>vs.</i> Alamo Manufacturing Company, <i>Defendant.</i>	

This cause coming on to be heard upon the plaintiff's motion for one week's time within which to take the deposition of Henry J. Podlesak upon the questions propounded by the Defendant in its interrogatories addressed to the said Henry J. Podlesak heretofore filed herein, and the Court having heard the arguments of counsel for both parties and being advised in the premises,

It Is Ordered: That the plaintiffs are granted leave within one week from this date to take the deposition of Henry J. Podlesak before any duly commissioned Notary Public as special examiner upon the questions propounded by the defendant in its interrogatories addressed to Henry J. Podlesak and heretofore filed herein.

ARTHUR J. TUTTLE
United States District Judge.

Approved as to form,
LYNN A. WILLIAMS
For Plfs.

G. B. SCHLEY
For Def't.

Filed Dec. 13, 1915, Elmer W. Voorheis, Clerk.

118 United States of America, }
 Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Order Granting Motion to Take a Deposition in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Order Granting Motion to Take a Deposition. Filed Dec. 13, 1915. Elmer W. Voorheis, Clk.

119 UNITED STATES DISTRICT COURT
 Eastern District of Michigan
 Southern Division.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company,	} Equity No. 112, Re-issue Letters Patent No. 13,- 878.
<i>Plaintiffs.</i>	
<i>vs.</i>	
Alamo Manufacturing Company,	} Defendant.
<i>Defendant.</i>	

DEPOSITION OF HENRY J. PODLESAK.

Taken at 720 Monadnock Block, Chicago, Ill., on Friday, December 17, 1915, pursuant to an order of Court entered on the 13th day of December, 1915, in the above entitled cause, before Mary A. Cook, a Notary Public in and for the County of Cook and State of Illinois, acting by appointment of the Court as Special Examiner.

Present:—Lynn A. Williams, Esq., for Plaintiffs.

HENRY J. PODLESAK, having been duly sworn, testified as follows in answer to questions propounded by counsel:

Direct Examination by Mr. Williams.

Q. 1. Will you please state your name, age and residence?

A. Henry J. Podlesak; age, 47. I reside at 1636 Millard Ave., Chicago, Illinois.

Q. 2. Are you the Henry J. Podlesak who is one of the parties to the suit of Emil Podlesak, Henry J. Podlesak and Webster Electric Company, Plaintiffs, vs. Alamo Manufacturing Company, Equity No. 112, based on re-issue Letters Patent No. 13,878, in the United States District Court for the Eastern District of Michigan, Southern Division.

A. I am.

Q. 3. Certain interrogatories were addressed to you by the defendant in the above-entitled suit and on December 13th, 1915, the Court entered an order directing that your 120 testimony be taken upon the subject matter of these interrogatories which I shall propound to you in the language in which they were filed by the defendant.

What particular claims of re-issue patent No. 13,878 are alleged by this plaintiff (Henry J. Podlesak) to have been infringed by defendant (Alamo Manufacturing Company)?

A. As advised, it is claims 19 and 21 of this reissue patent.

Q. 4. Is such alleged infringement by reason of manufacture or by reason of sale or by reason of use?

A. As at present advised, by reason of sale.

Q. 5. What is the structure manufactured or sold or used by defendant and alleged by this plaintiff (Henry J. Podlesak) to be an infringement?

A. It is an ignition outfit comprising a current generator and igniter sold by the defendant in connection with the gas engine of their make, the particular ignition outfit is, the plaintiff is advised furnished the defendant by the Hercules Electric Company of Indianapolis, Ind., and is known to the trade as the "Wizard" magneto.

Q. 6. What are the precise terms of the alleged assignment set up in paragraph 3 of the Amended Bill of Complaint as having transferred from Emil Podlesak, plaintiff, to Henry J. Podlesak, plaintiff, an undivided interest in the invention disclosed in re-issue patent No. 13,878? In answer to this interrogatory a copy of such alleged assignment may be furnished.

A. The assignment referred to is in the following terms: except that I omit a list of several patents not involved in this case:

"This Agreement, made and entered into on the 17th day of August, 1912, by and between Henry J. Podlesak, of Chicago, Illinois, hereinafter called the party of the first part, and Emil Podlesak, of Tiffin, Ohio, hereinafter called the party of the second part, Witnesseth:

"That, in consideration of One Dollar (\$1.00) by the party of the second part to the party of the first part into hand paid, the party of the first part does hereby sell and give 121 to, and agrees to execute formal assignment papers when called upon to do so by, the party of the second part Forty-nine One-Hundredths ($\frac{49}{100}$) of his entire interest in the below identified U. S. Letters-Patents and any such other patents as may be granted and issued upon the below identified, pending, applications for U. S. Letters-Patent, to-wit:

"2. And further, that in consideration of One Dollar (\$1.00) by the party of the first part to the party of the second part into hand paid, the party of the second part does hereby sell and give to and agrees to execute formal assignment papers when called upon to do so by, the party of the first part Fifty-one One-hundredths ($\frac{51}{100}$) of his entire interest, rights, in the below identified U. S. Letters-Patents and any such other patents as may be granted and issued upon the below identified applications, pending, for U. S. Letters-Patents, to wit:

No. 1,055,076, Mar. 4, 1913—Current Gen. & Ignitor, etc.,—Podlesak E.

and the party of the second part agrees that he has good right and lawful authority to sell and give his entire right or any portion thereof in the above identified patents and applications for patents.

"3. It is further agreed that the formal assignment papers may, if necessary or advisable, be made and executed in respect to any one or more of the herein identified patents or patents that may issue on any of the herein identified applications for patents, this prior to such time when all of said pending applications have matured into patents or have been abandoned.

"4. It is further agreed that the party of the first part and the party of the second part shall each receive Fifty-Hundredths (50/100) of all moneys and such other valuable considerations that may be obtained and received as net proceeds from the sale of any or all, of the above identified patents and application for patents.

122 "5. It is further agreed that the expenses of any suit or litigation that may be brought because of infringement of any of the above identified patents, and any patent that may be granted and issued on any of the above identified applications, shall be equally borne by each of the parties hereto; provided, that both parties hereto agree to join together as party complainants before any such suit is commenced.

"6. It is further agreed that the expenses of prosecuting the above identified pending applications for Letters-Patents shall be borne equally by each of the parties hereto.

"7. It is lastly agreed that the covenants herein shall be binding upon the heirs, assigns, and legal representatives of the parties hereto, and that all prior agreements by and between the parties hereto in respect to any of the above identified patents or applications relating thereto are hereby terminated and cancelled.

(Sgd.) HENRY J. PODLESAK
Party of the first part.
(Sgd.) EMIL PODLESAK,
Party of the second part''

Q. 7. When did this plaintiff (Henry J. Podlesak) first learn of the structure complained of in the Bill of Complaint and alleged to be an infringement?

A. This was about a year ago—in January or February 1915.

Q. 8. When subsequent to March 4th, 1913, did this plaintiff (Henry J. Podlesak) first read the claims of Letters Patent No. 1,055,076, which is the original patent upon which re-issue patent No. 13,878 is based?

A. I do not now remember exactly, but I began the consideration of the necessity for a re-issue of Letters Patent No. 1,055,076 sometime in August or September, 1914, and I believe I first read the claims of the original Letters Patent about the same time, namely, in August or September, 1914. Before this time I had not read these claims except in a cursory way and not carefully.

123 Q. 9. When, subsequent to March 4th, 1913, did this plaintiff (Henry J. Podlesak) first discover the alleged inoperativeness of said original Letters Patent No. 1,055,076 and the supposed need for the re-issue of such patent?

A. As I now remember, it was in the latter part of September or fore part of October, 1914.

HENRY J. PODLESAK.

Deposition Closed.

124

UNITED STATES DISTRICT COURT.

Eastern District of Michigan

Southern Division.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} Equity No. 112, Re-issue Letters Patent No. 13,878.
<i>vs.</i> Alamo Manufacturing Company, <i>Defendant.</i>	

State of Illinois, }
County of Cook. } ss;

I hereby certify that on the 17th day of December, 1915, before me, Mary A. Cook, a Notary Public in and for the County of Cook and State of Illinois, acting by consent of the Court as Special Examiner, personally appeared, pursuant to the Court's order and the subpoena hereto annexed at ten o'clock A. M., Henry J. Podlesak, the witness named in said notice, and Lynn A. Williams, Esq., appearing for the plaintiff, and the said Henry J. Podlesak being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as in the foregoing annexed deposition set out.

I further certify that said deposition was begun on the 17th day of December and completed on the same day.

I further certify that the said deposition was then and there reduced to typewriting by me and was, after it had been reduced to typewriting, subscribed by a witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reason why the said deposition

was taken was that the said witness resides at Chicago, 125 Illinois, more than one hundred miles from Detroit, Michigan, the place where this cause is to be tried.

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

Witness my hand and official seal at Chicago, this 17th day of December, A. D. 1915.

Notarial Seal.

MARY A. COOK,
Notary Public.

126 DISTRICT COURT OF THE UNITED STATES OF AMERICA

Northern District of Illinois

Eastern Division.

The United States of America To the Marshal of the Northern District of Illinois, Greeting:

We Command You to Summon Henry J. Podlesak, if found in your District, to be and appear before Mary A. Cook acting as Special Examiner at Room 720 Monadnock Block, Chicago, Illinois on the 17th day of December A. D. 1915 at 10 o'clock A. M. to testify in behalf of the Webster Electric Company in the cause pending in the United States District Court for the Eastern District of Michigan, wherein Podlesak et al are the plaintiffs and Alamo Mfg. Company is defendant.

And this you will in no wise omit under the penalty of the law in that case made and provided. And have you then and there this writ.

Witness the Hon. George A. Carpenter, Judge of the said Court at Chicago, in said District, this 13th day of December in the year of our Lord one thousand nine hundred and fifteen and of the independence of the United States of America the 139th year.

(Sgd) T. C. MacMILLAN,
Clerk.

Seal.

Filed Dec. 18th, 1915. Elmer W. Voorheis, Clerk.

127 United States of America, }
 Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Deposition of Henry J. Podlesak in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division
 Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Depositions of Henry J. Podlesak. Filed Dec. 18, 15 Elmer W. Voorheis, Clk.

128 IN THE UNITED STATES DISTRICT COURT
 Eastern District of Michigan
 Southern Division.

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company,	} In Equity No. 112.
<i>Plaintiffs</i>	
<i>vs</i>	
Alamo Manufacturing Company,	} In Equity No. 112.
<i>Defendant.</i>	

MOTION.

Plaintiffs by their counsel move that an order be entered dropping the above case from the trial calendar and in support of this motion present the affidavit of Robert M. See.

LYNN A. WILLIAMS,

WILLIAMS, BRADBURY & SEE,

Counsel for Plaintiffs.

Filed January 9th, 1917. Elmer W. Voorheis, Clerk.

129

IN THE UNITED STATES DISTRICT COURT

Eastern District of Michigan.

Southern Division.

Emil Podlesak, Henry J. Podlesak and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity No. 112.
<i>vs</i>	
Alamo Manufacturing Company, <i>Defendant.</i>	

AFFIDAVIT OF ROBERT M. SEE.

State of Illinois }
County of Cook } ss:

ROBERT M. SEE, being duly sworn, says:

I am a member of the firm of Williams, Bradbury and See, of Chicago, Illinois, who are counsel for plaintiffs in the above entitled cause which has been set for final hearing on January 9, 1917, at nine-thirty o'clock A. M., Central Time.

The Bill of Complaint in the above suit charges infringement of reissue patent No. 13,878, issued to plaintiff Emil Podlesak who assigned an undivided part interest therein to plaintiff Henry J. Podlesak, and said Emil Podlesak and Henry J. Podlesak subsequently granted to plaintiff Webster Electric Company a certain license under said patent, all of which appears by the pleadings and answers to interrogatories heretofore filed.

On or about September 4, 1915, plaintiffs Emil Podlesak and Henry J. Podlesak entered into a certain agreement with the Splitdorf Electrical Company and Sumter Electrical Company by which said Podlesaks purported to convey to said companies all of their rights in said patent and in their license agreement with the Webster Electric Company thereunder.

130 There is pending in the United States District Court for the Northern District of Illinois a suit in Equity brought by this plaintiff Webster Electric Company against Splitdorf Electrical Company, Sumter Electrical Company, and the plaintiffs herein Emil Podlesak and Henry J. Podlesak for their joint infringement of said patent 13,878 and

other patents. There is pending in the United States Patent Office an interference between said patent 13,878 and an application for patent filed by Edmond J. Kane, which application is owned and controlled by plaintiff Webster Electric Company, this interference involving all of the claims of said patent 13,878 in issue in the Chicago suit and in this suit. In said interference it duly appears that the Kane invention was made and completed prior to the Podlesak invention and it was therefore decided by the competent Patent Office Tribunal that the Kane and Podlesak inventions were the same and that Kane was entitled to make the claims of said patent 13,878 which are in issue here, after which the Examiner of Interferences awarded priority of invention of the subject matter set forth in said claims to Edmund J. Kane. Said interference was then appealed and submitted to the Board of Examiners in Chief before whom it is still pending and undecided.

ROBERT M. SEE.

Subscribed and sworn to before me this 6th day of January A. D. 1917.

MARY A. COOK,
Notary Public

Seal

Filed January 9th, 1917. Elmer W. Voorheis, Clerk. By Carrie Davison Dep Clk.

131 United States of America, }
Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Motion for an Order Dropping the Case from the Trial Calendar, Together with the Affidavit of Robert M. See in Support Thereof, in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this Tenth day of December, in the year of our Lord one thousand

nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Motion for an Order Dropping the Case from the Trial Calendar Together with the Affidavit of Rovert M. See in Support Thereof. Filed Jan. 9th, 1917. Elmer W. Voorheis, Clk.

132

PLAINTIFF'S EXHIBIT NO. 59.

IN THE UNITED STATES DISTRICT COURT

Eastern District of Michigan

Southern Division

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs</i>	} In Equity No. 112. In Equity.
<i>vs</i> Alamo Manufacturing Company, <i>Defendant.</i>	

Final Decree.

This cause coming on to be heard, and there being no appearance for plaintiff, it is hereby ordered and adjudged and decreed that the Bill be dismissed, without prejudice, with costs to defendant.

ARTHUR J. TUTTLE
District Judge.

Feb'y 1, 1917.

Approved as to form:

LYNN A. WILLIAMS

Counsel for Plaintiff.

HOOD & SCHLEY,

Counsel for Defendant.

Filed Feb'y 1, 1917. Elmer W. Voorheis, Clerk.

133 United States of America, }
 Eastern District of Michigan. } ss.

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Final Decree in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this Tenth day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ELMER W. VOORHEIS,

(Seal)

Clerk.

(Endorsed) No. 112 The District Court of the United States Eastern District of Michigan—Southern Division Emil Podlesak vs. Alamo Mfg. Co. Certified Copy of Final Decree. Filed Feb'y 1, 17. Elmer W. Voorheis, Clerk.

135

PLAINTIFF'S EXHIBIT NO. 60.

IN THE UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division.

Webster Electric Company,
Plaintiff,

—vs—

Henry Joseph Podlesak, Tesla Emil
 Podlesak, Sumter Electrical Com-
 pany and Splendor Electrical Com-
 pany,

Defendants.

No. 553.

Affidavit of Lynn A. Williams

State of Illinois, }
 County of Cook. } ss.

LYNN A. WILLIAMS, being first duly sworn on oath, de-
 poses and says:

I am attorney at law and am of counsel for the plaintiff,
 Webster Electric Company, in the above entitled cause. On
 December 2, 1915, there were delivered to me by the Western
 Union Telegraph Company two telegrams, one signed,
 "Sumter Electrical Company, By Charles T. Mason, Presi-
 dent," and the other "John F. Alvord, President." These
 telegrams are attached hereto and marked respectively, "Ex-
 hibit A—Williams' Affidavit" and "Exhibit B—Williams'
 Affidavit."

A few days after the receipt of the telegrams before men-
 tioned I received through the United States mail a letter
 signed "Sumter Electrical Company, By C. T. Mason, Presi-
 dent", this signature being attested by the Assistant Secre-
 tary of the Sumter Electrical Company, and impressed
 136 with the Company's seal. This letter is marked "Exhibit
 C—Williams' Affidavit". Attached to the letter from the
 Sumter Electrical Company was a copy of the telegram which
 I had received on December 2d, this copy being marked "Cer-
 tified Copy, E. H. Rhame, Asst. Sec." The Copy of the tele-
 gram referred to is marked "Exhibit D—Williams' Affi-

davit." A few days after the receipt of the telegram marked "Exhibit B—Williams' Affidavit" I received through the mails a letter signed "Splitdorf Electrical Company, John F. Alvord, President." This letter is attached hereto and marked "Exhibit E—Williams' Affidavit."

LYNN A. WILLIAMS

Subscribed and sworn to before me this 18th day of December, A. D. 1915.

ALBERT K. McCALEB

(Seal)

Notary Public.

137 EXHIBIT A—WILLIAMS' AFFIDAVIT.

(Western Union Telegram.)

B 61 AN EC 41 Blue 5 EX

Received at Cor. Jackson Boulevard and La Salle Sts., Chicago.

Sumter So Car Dec 2, 1109 AM
1642

Lynn A Williams

719 Monadnock Bldg Chicago Ill

The Sumter Electrical Co hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J Podlesak to you or any other attorney for Webster Electrical Co et al versus Alamo Mfg Co

SUMTER ELECTRICAL CO,

By CHARLES T MASON,

President

1235P

138 EXHIBIT B—WILLIAMS' AFFIDAVIT.

(Western Union Telegram.)

Received at Jackson Boulevard and La Salle St., Chicago.

1915 Dec 2 PM 8 10

C538NY 37 NL 1EX

NK Newark NJ 2

Lynn A Williams

5371

719 Monadnock Block Chicago Ill

Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J Podlesak to you or any other as attorney for Webster Electrical Company et al versus Alamo Manufacturing Co

JOHN F. ALVORD

President.

139 EXHIBIT C—WILLIAMS' AFFIDAVIT.

December 2nd, 1915.

Lynn A. Williams, Esq.,
719 Monadnock Block,
Chicago, Ill.

Dear Sir;—

Enclosed herewith you will find copy of telegram which we have just sent you.

We wish to confirm this telegram as follows:

"The Sumter Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak to you or any other attorney for Webster Electric Company et al versus Alamo Manufacturing Company"

Yours very truly,

SUMTER ELECTRICAL COMPANY,

By C. T. MASON,
President.

(Seal)

Attest:

E. H. RHAME

Asst. Secretary.

HRV/IB.

140 EXHIBIT D—WILLIAMS' AFFIDAVIT.

(Western Union Telegram.)

Lynn A. Williams,
719 Monadnock Block,
Chicago, Ill.

The Sumter Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak to you or any other attorney for Webster Electric Company et al versus Alamo Manufacturing Company.

SUMTER ELECTRICAL COMPANY

By CHARLES T. MASON,
President.

(Seal)

Certified Copy.

E. H. RHAME,

Asst. Sec.

12-2-15

11:00 AM

HRV (Ch. Co.)

Paid

141 EXHIBIT E—WILLIAMS' AFFIDAVIT.

(Letterhead of Splitdorf Electrical Company.)

Newark, N. J. Dec. 2, 1915.

Mr. Lynn A. Williams,
719 Monadnock Block,
Chicago, Ill.

Dear Sir:—

We have today telegraphed you as follows:

"Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak to you or any other as attorney for Webster Electrical Company et al versus Alamo Manufacturing Company."

which we hereby beg to confirm.

Kindly govern yourself accordingly, and oblige,

Yours very truly,

SPLITDORF ELECTRICAL CO.

JOHN F. ALVORD

President.

MWB/LGM.

B.

142 (Endorsed) No. 553 United States District Court
Nor District of Ill. East Div In Equity Webster Elec.
Co. Plaintiff vs. H. J. Podlesak et al Defendant Affidavit
of Lynn A. Williams Filed Dec 20 1915 at o'clock M.
T. C. MacMillan Clerk

144 PLAINTIFF'S EXHIBIT NO. 61.

Hearing May 14, 1917.

(Copy)

"Mr. Wright: I now offer the same in evidence and read the same into the record as follows:

August 10, 1915.

Patent Matters

Dear Van:—

Although I am terribly rushed today trying to get things in shape to leave for Nebraska tonight, H. J. Podlesack dropped in and gave me a chance to find out what he knew about Webster's latest move. H. J. brought in his new oscillator to show me. He had just come in from Champlain, Illinois, where they have been holding a tractor meet, and said

one of the Webster agents had told him he understood there was a deal on between Webster and Sumter and that Webster was going to take over Sumter, or vice versa. Someone had also told him that Williams, Brown, Mr. Webster and a Mr. Becker, the latter a Chicago banker, were all in New York where an important conference is being held, or was held last week with the Sumter interests.

'I asked H. J. what he knew of the patent Webster Company is claiming an anti-dating the Dixie. He says it is the old Varley idea which has been modified to some extent by the original Webster Company's engineer, one Milton, the exploits of whom nearly wrecked the old Webster Mfg. Co. This fellow, Milton, he says is the chap who got him (H. J. and his brother Emil) into the Webster organization because of Milton's infringement of the Podlesak patents, the matter having been finally adjusted by Podlesak giving the Webster people a license, their royalties to be not less than \$5,000 per year. This year it will run to \$12,000 he says.

'It appears that Milton had some agreement with the original company (Webster) whereby if they sold out he was to be paid \$50,000. This was compromised to half the amount and that the present Webster Co. had to pay off this \$25,000.

H. J. claims that the old company's experience with Mil-145 ton's high tension machine cost them many thousand dollars and that if they have any idea of reviving this machine it will soon break the present company.

'He says Lynn Williams evidently thinks some of the claims of this patent may read on the Dixie, but that he does not think Williams has a very broad idea of the previous history of machines of this Varley type. Podlesak is evidently very well informed as to the similarly constructed machines resembling the Dixie, and I believe it may be a good idea for you or Clement to have a talk with him, as he can tell you a great deal of the history of this Milton-Webster patent, his suggestions to Milton, etc. etc. He said he had just scrapped one of these old machines a few days ago.

'It appears that Milton went from the old Webster Co., to the Remy people, where he did more experimenting with machines of the Varley principal. Soon after he married a woman of some means and for the past year or so has been living in Detroit where he has been developing some other devices, and recently has written Emil Podlesak offering him a proposition to come with him and commercialize his new scheme. I neglected to ask Podlesak what the new scheme is.

'I think I have scared H. J. pretty well out of the idea of manufacturing his own new machine, but from what I could get out of him today, it appears he has the right under his agreement with the Webster Co. to manufacture any of the Podlesak magneto outfits himself, or to sell his patent with this right to manufacture and sell without interference from the Webster Electrical Co. Brown would probably dispute this, but he says his contracts with the Webster Co. will make clear his rights as stated in the premises. Now, if 146 Brown (the Webster people) gets too obstreperous, and if the bad feelings between Brown and Podlesak continues to brew as at present, I think H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business, and with their line and the plug oscillator, we sure would be in shape to command the field. I don't think Podlesak would expect anything like royalty he is collecting from the Webster Co.; and besides this Brown is getting 5% on the gross sales, besides his salary.

It is pretty tough on me, with these matters coming up and without my knowing anything of what has been going on down in New York, beyond what you wrote me the other day, so I hope you will advise me fully in the premises. I certainly wish you and Mr. Clement would get out here together as I believe we could have a very interesting "round" with the Podlesaks.

'Hope you can get some sense out of the above, all of which I have run off in a hurry and on an empty stomach too, as haven't had time to get out to lunch today.

Hastily,

FCM.WK.#40."

1163 63

MENT OF ACCOUNT NO OTHER RECEIPT NECESSARY
THIS VOUCHER CHECK

SIX THOUSAND SEVEN HUNDRED TWENTY EIGHT DOLLARS AND NO CENTS
MIMELA B. BROWN

PAY TO THE ORDER OF THE
National Newark & Essex Banking
NEWARK, N. J.
2-2-30
RESERVE BANK
1919
PAY TO THE ORDER OF
Any Bank or Banker
Guaranteed
PAY TO THE ORDER OF
ANY BANKER
LI INUST CO.
35-1
FEDERAL RESERVE BANK
NEW YORK
FEDERAL RESERVE BANK
NEW YORK
FEDERAL RESERVE BANK
NEW YORK

VOUCHER CHECK No 6975

WEBSTER ELECTRIC COMPANY
RACINE, WIS. January 13th, 1919.

To Splitdorf Electrical Company

On a/c Royalties, 3rd Quarter 1918

As per our letter of Sept 19, 1918

6728 90

[Signature]
Vice President

'I think
manufact
get out o
agreement
Podlesak
this right
the Webs
this, but I
clear

146 Brown

if the
tinues to
in the fra
as would
their line
to comma
anything
and beside
sides his

It is pro
without n
down in N
so I hope
tainly wis
as I belie
the Podles

'Hope
which I h
too, as ha

FCM.WK

150

PLAINTIFF'S EXHIBIT 64

Escrow Agreement

This agreement, made and entered into this 10th day of April A. D., 1912, between John L. Milton of Louisville, in the County of Jefferson, and State of Kentucky, party of the first part, and Webster Electric Co., a corporation organized and existing under and by virtue of the laws of the state of West Virginia, and having its principal place for doing business in the City of Tiffin, County of Seneca, and State of Ohio, party of the second part.

Witnesseth: That

Whereas, said party of the second part is indebted to the party of the first part in the just and true sum of Fifteen Thousand Dollars (\$15,000.00) as evidenced by Seventy-five (75) promissory notes, for the amount of Two Hundred Dollars (\$200.00) each, and each bearing interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D., 1913; the said notes being payable at intervals of one month beginning on the first day of May, A. D., 1913, the said notes having been signed by the party of the third part, by its duly authenticated officers and having been made payable to the order of the party of the third part, and having by agreement been turned over to Lynn A. Williams, a resident of the City of Evanston, in the County of Cook and State of Illinois, for the benefit of the party of the first part hereto; and

Whereas, the said party of the second part is desirous of securing to the party of the first part the payment of each and all of said notes at or before its maturity; and

Whereas, in order to furnish security for the payment of the said note to the order of the party of the first part, said parties hereto are desirous of placing or having placed in escrow a certain assignment of certain inventions and letters Patent and applications therefor of said party of the first part, which said assignment is to be held and delivered by the escrow holder, as mutually agreed and subject to certain conditions hereinafter specified;

151 Now, therefore, in consideration of the premises and of One Dollar (\$1.00) by each in hand paid to the other and receipt whereof is hereby acknowledged.

It is agreed as follows:

1. That the original assignment heretofore mentioned, duly executed by the party of the first part and a copy of

which is attached hereto for purposes of reference, and as such made a part hereof, shall be delivered to, held by and remain in escrow with Lynn A. Williams, of the City of Evanston, County of Cook, and State of Illinois, until said party of the second part shall have paid to the order of the party of the first part each and all of the said notes for Two Hundred Dollars (\$200.00) each and each bearing interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D., 1913, and which said notes mature on the first day of May, A. D., 1913, and successively thereafter on the first day of each of the seventy-four (74) months succeeding, to the total amount of Fifteen Thousand Dollars (\$15,000.00) whereupon said escrow holder shall turn over and deliver to the party of the second part the said assignment duly executed by the party of the first part; provided, however, that in the event that the said party of the second part shall fail to pay any of said notes with interest at maturity, and when presented for payment by the said party of the first part, or his order, then said escrow holder, upon being advised in writing of the said default, shall, upon proof of such default, notify the party of the second part in writing of the said default, and if, within fifteen (15) days thereafter the party of the second part shall not have made payment to the party of the first part of any and all notes theretofore matured and with interest as in the notes provided, then the escrow holder shall, upon ten (10) days' notice in writing to the party of the first part and to the party of the second part, sell and turn over to the highest bidder the said blank assignment of patent applications and patents described therein, and shall apply the proceeds of said sale to the payment 152 to the party of the first part or his order of any and all of the said notes remaining unpaid by the party of the second part at the time of such sale, and shall turn over to the party of the second part the remainder of the proceeds of such sale, if any.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the party of the second part by its duly authorized officers, as of the day and year first above written.

JOHN L. MILTON (Seal)

WEBSTER ELECTRIC CO.

By T. K. WEBSTER

President.

Attest:

Secretary.

ACCEPTANCE OF ESCROW.

I hereby accept the original assignment from John L. Milton to Webster Electric Co., referred to in the foregoing original agreement between said parties and consent to act as escrow in the matter in accordance with the terms of said agreement.

Dated at Chicago, Illinois, this 10th day of April, 1912.

LYNN A. WILLIAMS.

153

AGREEMENT

This Agreement, made this 10th day of April 1912, by and between John L. Milton, of Louisville, in the County of Jefferson, and State of Kentucky, party of the first part, The Webster M'f'g. Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio and having its principal office and place of business at Tiffin, in the State of Ohio, party of the second part, Webster Electric Co., a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and having its principal office and place of business at Tiffin, in the State of Ohio, party of the third part, and Towner K. Webster, of Evanston, in the County of Cook and State of Illinois, party of the fourth part;

Witnesseth:

Whereas the party of the first part is the inventor of certain inventions and improvements relating to High Tension Ignition Apparatus and Systems and Low Tension Ignition Apparatus and Systems for which he has filed applications for United States Letters Patent, upon some of which applications patents have been granted, and

Whereas the parties to this agreement have heretofore entered into various agreements, both verbal and in writing, relating to the aforesaid inventions and improvements of said party of the first part, disclosed and embodied in his patents and applications for patents, heretofore referred to and as follows:

Case	Serial No.	Filed	Allowed	Issued	Improvement
1	307,391	3/22/06	11/ 5/00	5/31/10 \$959,954	Electric Generators.
2	357,041	2/12/07			Inductor Generators.
3	379,485	6/17/07			Inductor Generators for Ignition Purposes.
4	384,049	7/16/07			Inductor Alternator.
5	443,608	7/15/08			Magneto Ignition Ap- paratus.
6	422,584	3/23/08	6/14/11	1/16/12 \$1,015,275	Electrical Equipment for Automobiles.
7	420,118	4/25/08			Magneto Ignition Sys- tems and Apparatus.
8	475,170	1/30/09			Apparatus for the Pro- duction of Alternating Currents.
9	475,171	1/30/09			Apparatus and Method for Generating Alter- nating Currents.
10	589,564	10/28/10			Magneto Generators.
11	None	Not Filed			Inductor Alternators.
12	591,929	11/12/10	12/24/10		Method of Making Electric Coils.
13	591,930	11/12/10			Magneto Ignition Sys- tems for Internal Com- bustion Engines.
14	621,458	4/17/11			Electric Coils and Con- densers.
15	615,184	3/18/11			Magneto Ignition Sys- tems for Internal Com- bustion Engines.

and to other transactions, matters and things pertaining to the manufacture, use and sale of said Ignition Apparatus 155 and Systems embodying the said inventions or improvements of said first party, all of which prior agreements the parties hereto are desirous of canceling and having superseded by this agreement, and

Whereas, the parties hereto are desirous of settling and disposing of all differences, controversies, accountings, understandings, agreements, claims and demands, causes of action, actions at law and suits in equity of every kind, nature and description existing between said first party and the other parties hereto, and

Whereas said party of the first part is to acquire by assignment the entire right, title and interest in and to the said inventions and improvements and applications and patents therefor, relating to High Tension Ignition Apparatus and Systems, and said party of the third part is to acquire by assignment the entire right, title and interest in and to the said inventions and improvements relating to Low Tension Ignition Apparatus and Systems, and

Whereas said party of the first part is to receive the sum of Twenty-five Thousand Dollars (\$25,000.00) from said third party as follows: Thirty-five Hundred Dollars (\$35,000.00) in cash at the time of the execution of this agreement and the remainder at intervals as hereinafter stated; and said party of the first part is to be secured in the payment of a part of the consideration, to-wit: Six Thousand, Five Hundred Dollars (\$6,500.00), by the execution by said party of the third part of a chattel mortgage and notes for the benefit of the party of the first part upon certain of the personal property of said party of the third part; and for securance of payment to the said party of the first part of the balance of the 156 consideration, to-wit: Fifteen Thousand Dollars (\$15,000.00), an assignment to the party of the third part of said inventions and improvements in Low Tension Ignition Apparatus and Systems and patents and applications therefor is to be placed in escrow pending the payment to said party of the first part of said sum of Fifteen Thousand Dollars (\$15,000.00), and

Whereas certain pending suits against said parties of the second part and third parts are to be dismissed at the costs of said party of the first part,

Now, therefore, in consideration of the premises and the mutual undertakings of the parties hereto, and of One Dollar (\$1.00) by each in hand paid to each of the others, the receipt whereof is hereby acknowledged, the parties agree and covenant, as follows:

1. The parties of the second, third and fourth parts agree to execute at the time of execution of this agreement an assignment to said party of the first part of their entire right, title and interest in and to each and every of the inventions and improvements of said party of the first part, relating to High and Low Tension Ignition Apparatus and Systems and the applications for patents and patents therefor.

2. The party of the first part agrees to execute at the time of execution of this agreement an assignment in blank of all the right, title and interest in and to the said inventions and improvements relating to Low Tension Ignition Apparatus and Systems and the said applications for patents and patents therefor, and in and to any inventions and improvements relating to Low Tension Ignition Apparatus and Systems 157 which the said party of the first part has made, a copy of which assignment is attached hereto and the provisions

of which are made a part hereof, the said blank assignment to be delivered into the hands of an escrow holder and held by him subject to an escrow agreement of even date herewith and a copy of which is hereto attached and made a part hereof.

3. The party of the third part agrees to pay to and for the benefit of the party of the first part the sum of Twenty-five Thousand Dollars (\$25,000.00) as follows: Thirty-five Hundred Dollars (\$3500.00) to be paid in cash simultaneously with the execution of this agreement, and promissory notes secured by chattel mortgage as hereinafter provided, signed by the party of the third part to be delivered to Lynn A. Williams of the City of Evanston, County of Cook, and State of Illinois, for the benefit of the said John L. Milton as provided in an agreement between said John L. Milton, Webster Electric Co. and said Lynn A. Williams, executed of even date herewith and a copy of which said agreement is attached hereto and made a part hereof, the said promissory notes to bear interest at the rate of six (6%) per cent. per annum, the first note to be for the amount of Fifteen Hundred Dollars (\$1500.00) payable three months after the date of execution of this agreement, the second note to be for the amount of Twenty-five Hundred Dollars (\$2500.00) payable six months after the date of execution of this agreement, and the third note to be for the amount of Twenty-five Hundred Dollars (\$2500.00) payable twelve months after the date of the execution of this agreement; and said party of the third part further agrees to pay to the party of the first part an additional sum of Fifteen Thousand Dollars (\$15,000.00) payable in monthly installments of Two Hundred Dollars (\$200.00) each, with interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D., 1913, the first said payment of Two Hundred Dollars (\$200.00) to be made on the first day of May, A. D., 1913, and subsequent payments of Two Hundred Dollars (\$200.00) each to be made on the first day of each month thereafter until the whole sum of Fifteen Thousand Dollars (\$15,000.00) has been paid, these payments of Two Hundred Dollars (\$200.00) per month to the total amount of Fifteen Thousand Dollars (\$15,000.00) being secured by promissory notes bearing interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D., 1913, which said notes payable to the order

of the party of the first part shall be executed by the party of the third part and delivered to the party of the first part simultaneously with the execution of this agreement. It is expressly understood and agreed that the party of the third part shall have the privilege of paying to the party of the first part or his order, the amount of any or all of said notes for Two Hundred Dollars (\$200.00) each, at any date prior to their maturity.

4. Said party of the third part hereby agrees to execute at the time of execution of this agreement a chattel mortgage to said Lynn A. Williams, upon certain of its personal property, the said chattel mortgage to be handled by said Lynn A. Williams for the benefit of said John L. Milton to secure the payment of said three, six and twelve months' notes, as provided in an agreement between said Webster Electric Co., said John L. Milton, and said Lynn A. Williams, executed of even date herewith and a copy of which said agreement is attached hereto and made a part hereof.

5. It is understood and agreed that to secure the payment of the Fifteen Thousand Dollars (\$15,000.00), which is to be paid to said first party at the rate of Two Hundred Dollars (\$200.00) a month, commencing on the first day of May, A. D., 1913, the assignment to the party of the third part referred to in Section 2 hereof shall be placed in and remain in escrow pending the payment of the whole of said sum of Fifteen
159 Thousand Dollars (\$15,000.00) to said party of the first part, all as provided in a certain escrow agreement entered into by and between the parties of the first and third parts hereto and executed of even date herewith, and a copy of which said escrow agreement is attached hereto and made a part hereof.

6. Said party of the first part agrees to cause promptly the dismissal, at his own costs, of suit brought in the Municipal Court of Chicago, Cook County, Illinois, by one Browinski, against said parties of the second and third parts hereto, which suit is known as No. 202,470; and said party of the first part further agrees to cancel the notes heretofore made by said parties of the second and third parts relating to said matter sued upon and cause them to be returned to said parties of the second and third parts.

7. Said party of the first part agrees to cause the dismissal promptly, at his own costs, of the suit brought by said party of the first part against said party of the second part in the

Circuit Court of Cook County, Illinois, which suit is known as No. 310,064.

8. Said party of the first part agrees to and does hereby release all his interest in the shares of stock of said party of the third part, and of any other corporation, which he might have been entitled to under the terms of any and all agreements with the parties of the second, third or fourth parts hereto.

9. Said party of the first part agrees to and does hereby release and forever relinquish all right, title and interest of whatever kind and nature that he may have against said parties of the second, third and fourth parts, except as specifically provided herein as to the payment to or for him of Twenty-five Thousand Dollars (\$25,000.00), and said parties of the second, third and fourth parts, and each of them, are hereby released by said party of the first part of and from all accountings, controversies, understandings, agreements, claims and demands, causes of action, actions at law, suits in equity of every kind, nature or description which said party of the first part now has or ever has had against said parties of the second, third and fourth parts, or any or either of them, except only as herein otherwise provided, and party of the first part hereby specifically releases the parties of the second, third and fourth parts, and each and all of them under any and all claims which he has or had, or which he may or might have asserted for the payment of patent royalties or license fees of any kind whatsoever, and any such claim for the payment of patent royalties or license fees is hereby specifically waived and cancelled.

10. The party of the third part hereby grants unto said John L. Milton, his heirs, assigns and legal representatives a license to make, use and sell throughout the whole of the United States, its territories and possessions, high-tension (jump spark) ignition apparatus and systems embodying the inventions described and claimed in the said patent applications Case 2 and Case 5 and any United States patent or patents that may be granted thereupon, the said license to continue and be in force until the full end of the term for which the said patent or patents may be granted.

11. This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto set

their hands and affixed their seals, the parties of the second and third parts by their duly authorized officers, all as of the day and year first above written, at Chicago, Illinois.

JOHN L. MILTON (Seal)
THE WEBSTER M'FG COMPANY,
By T. K. WEBSTER
President.
THE WEBSTER ELECTRIC CO.
By T. K. WEBSTER
President.
TOWNER K. WEBSTER (Seal)

Attest:

Secretary.

Attest:

161

ASSIGNMENT

For and in Consideration of the sum of One Dollar (\$1.00) to me in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, I, John L. Milton, of Louisville, in the County of Jefferson, and State of Kentucky, to hereby sell, assign and transfer unto

....., the whole right, title and interest in and to my inventions and improvements disclosed in the following named United States Letters Patent and applications for patent and in and to the following United States Letters Patent and applications for patent:

Case	Serial No.	Filed	Allowed	Issued	Improvement
1	307,391	3/22/06	11/ 5/09	5/31/10 \$959,954	Electric Generators.
2	357,041	2/12/07			Inductor Generators.
3	379,485	6/17/07			Inductor Generators for Ignition Purposes.
5	443,608	7/15/08			Magneto Ignition Ap- paratus.
9	475,171	1/30/09			Apparatus and Method for Generating Alter- nating Currents.
10	589,654	10/28/10			Magneto Generators.

the said right, title and interest to be held and enjoyed by the said _____, for its own use and behoof and for the use and behoof of its successors and assigns to the full end of the term for which said Letters Patent are and may be granted, as fully and entirely as the same would have been held and enjoyed by me had this 162 assignment and sale not been made, and I hereby sell, assign and transfer to _____

all rights and causes of action and suit resulting from infringements of said patents which may have occurred at any time during the life of said patent and prior to the date hereof, and I further hereby sell, assign and transfer unto said _____, the whole right, title and interest in and to any inventions and improvements relating to Low Tension Ignition Apparatus and Systems which I have made, and I agree to execute all papers, including formal assignments, which may be necessary or expedient to enable said _____ to obtain and acquire patents thereon and legal title thereto.

I Authorize and Request the Commissioner of Patents to issue the patents which may be granted on said applications to said assignee for the sole use and behoof of said assignee, its successors and assigns.

In Testimony Whereof, I have signed my name and affixed my seal at Chicago, Illinois, as of the 10th day of April, A. D., 1912.

JOHN L. MILTON (Seal)

State of Illinois }
County of Cook } ss:

Be it remembered that on this 10th day of April, 1912, before me, Leonard W. Novander, a Notary Public, duly commissioned, qualified and acting in and for the County and State aforesaid, came John L. Milton, personally known to me to be the identical person whose name is subscribed to the foregoing instrument of writing and acknowledged that he executed and signed the same as his free act and deed for the purposes and consideration therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

LEONARD W. NOVANDER

Notary Public.

164

PLAINTIFF'S EXHIBIT 65

Agreement.

This Agreement, made this 23rd day of November, 1907, by and between John L. Milton, of Chicago, in the County of Cook, and State of Illinois, party of the first part, and the Webster M'f'g Co., a corporation of the State of Illinois, having its principal office and place of business at Chicago, Illinois, hereinafter called the party of the second part;

Witnesseth:

Whereas, the said John L. Milton has filed in the Patent Office of the United States, at Washington, D. C. applications for letters patent for inventions and improvements in Electric Generators for Ignition Purposes, dated and numbered respectively; March 22nd, 1906, Serial No. 307,391; February 12th, 1907, Serial No. 357,041; June 17th, 1907, Serial No. 379,485; and July 16th, 1907, Serial No. 384,049; and

Whereas, the parties to this agreement have heretofore entered into agreements, both verbal and in writing, relating to the aforesaid inventions and improvements disclosed and embodied in the aforesaid applications for letters patent, and to other matters and things pertaining to the manufacture, use and sale of Electric Generators embodying the said inventions or improvements of said first party, all of which prior agreements both parties now desire to cancel and have superseded by this agreement; and

Whereas, the party of the second part is desirous of
165 acquiring the exclusive right and license to manufacture, use and sell electric generators embodying and containing the inventions and improvements of the first party as disclosed and set forth in the said applications for letters patent of the United States, and of any and all other inventions or improvements which the said first party has made, or may make in the future, or acquire, relating to Electric Generators for Ignition Purposes and to Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors; each and all of which inventions or improvements are hereinafter, for brevity, called "Milton Improvements"; and

Whereas, the said party of the first part agreed to give and grant to the party of the second part the sole and exclusive right and license to manufacture, use and sell throughout the United States and territories thereof Electric Generators for Ignition Purposes, embodying and containing the inven-

tion or inventions of the said first party, as disclosed and set forth in the aforesaid applications for letters patent of the United States, and any improvements on said inventions or improvements in Electrical Generators for Ignition Purposes and Ignition Apparatus for Use in Connection with Internal Combustion Engines or Motors, which the said first party has made or may in the future make, or acquire, or in which he shall in any wise be interested, as a joint inventor, by purchase, or otherwise;

Now, Therefore, the parties hereto covenant and agree as follows:

1. That any and all prior agreements between them relating to the aforesaid inventions or improvements in Electric Generators, and the aforesaid applications for letters patent therefor, are canceled and shall from now henceforth for all time be considered canceled and of no force and effect; and, in consideration of the mutual considerations and covenants hereinafter set forth shall be and are superseded by this agreement which is entered into in the stead of any and all such prior agreements;

2. The Said John L. Milton, party of the first part, hereby gives and grants to the Webster M't'g Co., party of the second part, its successors and assigns, the sole and exclusive right and license to manufacture, use and sell throughout the United States and territories and possessions thereof, Electric Generators for Ignition Purposes and ignition apparatus embodying and containing the said "Milton Improvements," for and during the life of any and all letters patent of the United States which may be granted for any and all such "Milton Improvements";

3. During the life of this agreement, all inventions or improvements made by the said party of the first part relating to Electric Generators for Ignition Purposes and to Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors; all applications for letters patent of the United States made by the said party of the first part relating to Electric Generators for Ignition Purposes and to Ignition Apparatus for use in Connection with Internal Combustion Engines for Motors, and all patents granted to
167 the said party of the first part relating to Electric Generators for Ignition Purposes and to Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors, and all such inventions or improvements and the patents therefor in which he shall have or acquire any inter-

est, shall be regarded as and shall be embraced by and included within, the terms of this contract and agreement;

4. The party of the second part, its successors or assigns, covenants and agrees to account for and pay over to the said party of the first part a royalty or license fee upon all Electric Generators for Ignition Purposes and Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors, made and sold by the said second party, and having and containing said "Milton Improvements," for which letters patent of the United States have been granted to the said first party, and are owned by him, ten per cent (10%) of all monies collected by the said second party on sales of such Electric Generators for Ignition Purposes and Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors, provided, however, that if such patented invention or inventions, or improvement, or improvements, of the said first party are dominated by and subordinated to any patents owned or controlled by said second party; or in case the second party shall be obliged, under existing contracts, to pay royalties under other patents, the said second party shall pay to the said first party a royalty or license fee of five per cent (5%) of all monies collected on sales of Electric Generators for Ignition Purposes and Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors, manufactured and sold by it and embraced by and included within the terms of this contract and agreement; provided, that nothing herein contained shall be construed to require payment of a royalty or license fee upon parts made and applied by the said second party only for the purpose of repair, and provided further that the party of the second part shall not sell the "Milton Improvements" at cost or for less than a fair market price, it being the spirit of this agreement that the party of the first part shall receive as a royalty his percentage of a fair market price;

5. The party of the second part agrees to keep just and true books of account, showing the number of devices or apparatus which it shall make, having and containing the said "Milton Improvements" or any of them; said books to be open at all reasonable times to inspection by the said party of the first part, or his duly authorized agent;

6. The party of the second part further covenants and agrees to render upon the 10th day of the months of January and July in each and every year, during the continuance

of this license and agreement, a strict and true account setting forth the number of devices or apparatus having and containing said inventions or improvements, or any of them, made by it, and with each and every account to make payment of the royalties due and owed by said second party for the period covered by said account.

7. The party of the second part shall plainly and durably mark upon each Electric Generator for Ignition Purposes, and upon Ignition Apparatus made by it and containing said "Milton Improvements" for which letters patent of the United States have been granted, or any of them, the word "Patented", together with the date or dates of the letters patent covering the same:

8. The party of the second part further covenants and agrees that it will exercise due diligence and its best endeavors to introduce said "Milton Improvements" to the public, and to create and supply a demand for said Electric Generators for Ignition Purposes and Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors, and will also make such Electric Generators for Ignition Purposes and Ignition Apparatus for use in Connection with Internal Combustion Engines or Motors in a good and workmanlike manner;

9. The party of the second part shall not at any time, while this exclusive license agreement and contract remains in full force and effect, dispute the validity of any or all letters patent for any or all said "Milton Improvements" which may hereafter be granted and embraced by and included in the terms of this contract and agreement, and which it shall use, nor shall it dispute the title of the party of the first part thereto;

10. The party of the first part covenants and agrees that he has not executed and will not execute any instrument or agreement in conflict therewith;

11. If the party of the second part, during the life of this agreement, shall cease to manufacture said "Milton

Improvements" as shown by Patent Applications, Nos. 307,391 & 357,041, for a continuous period of eighteen (18) months, then, and in such case, the said first party may terminate this exclusive license agreement by a written notice served upon the said party of the second part and the payment to the said second party of five thousand Dollars (\$5000.) If the party of the second part shall for a period of eighteen (18) months cease to manufacture said "Milton

Improvements", known as the "Jump Spark" and "Trifurcated Pole", then the party of the first part may terminate this license as to the patents covering the same, without the payment of any money to the party of the second part.

12. It is further understood and agreed that in the event the second party sells, assigns, or disposes, in any way, of any or all of the rights granted to and secured by it under the terms of this exclusive license agreement, then, and in that event, the said party of the second part shall give the said party of the first part ten percent (10%) of the proceeds received from the said sale by the said second party, whatever be the nature of the said proceeds, it being understood that such sale must be a bona fide one and for the reasonable market value of the right title and interest sold;

Nothing in this clause #12, shall be construed to mean that parties buying rights of party of the second part shall be released from paying royalties to party of first part, as stated in this agreement.

13. If the improvements or inventions set forth and disclosed in any or all of the Letters Patent hereafter granted and by this agreement embraced and included, shall be infringed and the first party, having due and timely notice of such infringement, shall not promptly take, at his own cost, the necessary proceedings to effectually defend the said letters Patent, any, or all of them, then, and in any such case, it shall be lawful for the second party to institute and conduct such suit or proceedings as is necessary to protect its interests, at its own expense.

The party of the first part covenants and agrees, that, in the event that the second party desires to institute and
171 conduct such suit or proceedings in the name of the said first party, or jointly with him, the first party will promptly sign or execute any and all legal papers or instruments necessary for the proper instituting and conducting of such suit and proceedings, except that first party shall not be required to sign any bond or obligation for costs or other expenses of litigation;

14. It is further agreed by and between the parties hereto, that in case any proceeding shall be commenced against the said second party for infringing any patent because of anything done by it under this agreement, and the first party, having due and timely notice of such proceedings, shall not promptly take, at his own cost, the necessary action to defend against said suit, then, and in any such case, it shall be lawful

for the second party to defend and conduct such suit or proceedings, and from the date of the institution or commencement of any such suit, or suits, the party of the second part may charge the cost of such litigation against the net proceeds which shall accrue from the sale of said "Milton Improvements" during the pendency of such proceedings and shall be entitled to deduct from the royalties accruing to the party of the first part, after the beginning of said suit or proceedings, such proportion of the cost of such litigation as the royalties reserved to said first party, under the terms of this agreement, shall bear to the total net profits received by said second party during the same period; e. g. if the net profits received by the party of the second part, after deducting all expenses excepting expenses of litigation and including the

amount charged as royalty, is twelve dollars (\$12.00), 172 and the royalty due thereon is three dollars (\$3.00) then the party of the first part shall be charged with one-fourth ($\frac{1}{4}$) of said expenses and in like proportions whatever the royalty may be.

The second party, in the event that it shall elect to conduct said litigation as stated above shall use all due effort to bring such proceedings to a speedy conclusion; and it is further agreed that the party of the first part shall not be required to contribute any portion of the expenses of defending such suit if the infringement charged relates solely to devices on which he receives only five per cent (5%) of the net selling price as royalty;

15. The party of the first part agrees that he will, during the term of this contract, fully disclose to the party of the second part, promptly when made, every invention or improvement coming within the provisions of this agreement which he may make, invent, or acquire, and that he will, and his legal representatives and assigns shall promptly execute and deliver at any time upon request of the second party, any and all papers that may be necessary or desirable to protect the rights of the second party by this agreement acquired and not in conflict herewith; and any and all applications for letters patent of the United States relating to said "Milton Improvements," which counsel for second party deem should be filed in the United States Patent Office; and any and all papers that may be necessary and desirable to properly prosecute any and all of said applications for letters patent; It is further understood and agreed that 173 the party of the first part shall aid and assist the party of the second part by all proper means to prosecute said

applications, and in any interference that may arise under the same, and in any suit or, proceeding brought under any of the Letters Patent covered by this agreement, and in any suit brought against the party of the second part for infringement by reason of any thing it may make under this license, by giving any information or proper testimony within his power, and without compensation, except his actual expenses while so assisting of testifying.

16. The party of the second part covenants and agrees to pay any and all expenses incident to the preparation, filing, prosecuting and patenting of any and all applications for Letters Patent of the United States relating to said "Milton Improvements" for which patent counsel for second party deem that Letters Patent of the United States should be secured, and any and all expenses incident to the preparation, filing, and prosecuting of any and all applications for the reissue of any letters patent of the United States granted for said "Milton Improvements" which Letters Patent counsel for the second party deem should be reissued;

17. If the royalties herein agreed to be paid to the party of the first part shall not during the year beginning eighteen (18) months after the grant of Letters Patent of the United States on either of said applications, 379,485; 384,049, or not later than eighteen (18) months after July 1st. 1908 amount to at least Eight Hundred Dollars (\$800.00), or, if said royalties shall not amount to at least said sum during any 174 one year after said first year, the party of the first part may terminate this agreement by giving sixty (60) days' notice, in writing, of his election so to do to the party of the second part, provided, however, that the party of the second part may continue this agreement in force by paying the said first party said sum of Eight Hundred Dollars (800.) annually;

18. It is further agreed between the parties hereto that in case any or all of the letters patent hereby embraced and included shall be determined invalid by legal procedure, or in case said second party shall be enjoined from using them, or any of them, the second party shall from such time be released from any and all obligations to pay further royalties under such patent, or patents; as have been invalidated.

Finally: This agreement shall extend to and be binding upon the heirs, executors, administrators and assigns of the party of the first part, and the successors and assigns of the

party of the second part, and shall expire with the expiration of that patent last issue upon said pending applications.

Referring to Par. 11 in this Agreement, the following modification has been agreed to by both parties; If in the development of the manufacture and sale of the magnetos referred to in this agreement, it should be found that the business cannot be successfully carried on, on account of the failure, either mechanically or electrically, of the Milton devices so that the machines are not a practical success and do not give uniform and perfect satisfaction, then and in that event Party of the First Part must pay to Party of the Second Part the Five Thousand dollars (\$5,000.) named in Par. 11, before he can cancel this exclusive license given to party of Second Part, but should the Milton Improvements be found to be perfectly satisfactory, both mechanically and electrically, but if, for commercial reasons, the Party of the Second Part does not continue to manufacture and sell the magnetos manufactured under these Milton Patents, then and in that event, Party of the First Part has the right to cancel this exclusive license, without cost to said Party of the First Part, and Party of the Second Part is to acknowledge cancellation and return to said Party of the First Part the patent applications No. 307,391 and No. 357,041., without clouding the title to said Party of the First Part, in said inventions.

In Witness Whereof the Party of the First Part has hereunto set his hand and seal and the Party of the Second Part has caused its name to be signed hereto by its President and it corporate seal attested by its Secretary to be hereunto affixed at Chicago, Illinois, the day and year first above written.

JNO. L. MILTON,
WEBSTER MFG. Co.

By T. K. WEBSTER,
Its President.

(Seal)

Attest:

JNO. P. LENOX,
Its Secretary.

Signed, Sealed and
Delivered in the Presence of

L. H. WEBSTER,
L. F. KITCHILL.

Chicago, Ill.

May 10, 1896

Dear Mr. Lewis Milton

I have just received your letter containing my name on the equalizing fund and I am sure in haste to return my reply.

I am glad to hear that you are well and hope the most comfort and health will be yours.

will be glad to see you. I have just received your letter and I am sure in haste to return my reply.

I am sure in haste to return my reply.

I am sure in haste to return my reply.

I am sure in haste to return my reply.

I am sure in haste to return my reply.

Yours very truly,

Chicago, Ill.

May 10, 1896



Mr. John Lewis Milton,

3000 W. Grand Boulevard

Detroit

Mich



180

PLAINTIFF'S EXHIBIT 67.

May 9th, 1916.

Mr. Gerald D. Chiville,
3449 Elaine Place,
Chicago, Illinois.

My dear Gerald:—

Your letter of the 5th inst. reached me Saturday afternoon and knowing that Mr. See was to call on me Monday, I delayed answering your letter until this time. The question of advising you in this matter is rather a difficult one as the events referred to transpired quite a long time ago and it is no wonder that our minds are a bit hazy on the subject.

Mr. See had a number of sketches with him. One in particular, that was found in Brown & Williams' old files of my patent application that was never filed. This refreshed my mind very materially. It was for the type of magneto operating mechanism that I made to overcome the trouble encountered with the first I. H. C. type of spring operating magneto. He had with him the sketch which was made by Kane under instructions, for the type of bracket which was finally adopted. He also had a tracing that Kane made and which, I believe, is the one you mention in your letter. It carried the main coil springs attached to the inductor by means of studs extending through the spider and the other end extending to the outside end of the pole pieces. This apparatus was bolted on to the spark plugs and was a two piece affair. We never built it owing to the fact that it was impractical, very complicated and not direct. The feature that Kane is entitled to is the method of operating the roller for holding the pusher rod up, on the idle strokes of the engine and thereby allow the magneto mechanism to remain inactive. This is the point on which he asked for a patent and which apparently has been refused by the patent office.

I filed my application in England in October, 1909. When his attorney found that he could not get the feature he claimed, he layed claim to the features that I developed and have had patents issued in several countries for several years. His claims were made just a few months ago. It does not seem to me that he can explain this dilatory action.

Sometime this year the title of my low tension patents will pass to the Webster Electric Company and, of course, my direct interest is severed. However, I want to see the Webster people hold a valid title to the invention.

the

a
ary
itle
ced
of
hat
ner
3th

the
our
et,
w-
of
to
py
if

on
e-
nt
r,
ne

r-

It is really impossible for me to advise you whether to sign the affidavit or not and if I was in your place, I certainly would not do it unless I felt absolutely sure that every statement contained therein is clear in my mind and that I believed it to be absolutely accurate.

I certainly appreciate your kind letter and the interest you have manifested and I want to thank you. My family is quite well and appreciates your message. We are glad to hear that all of you continue to enjoy your usual good health.

With best regards to yourself and family, I am

Yours truly,

JLM:MAC

182

PLAINTIFF'S EXHIBIT 68.

Motor Ignition & Devices Co.
Boydell Building
Detroit, U. S. A.

Oct. 11th, 1915.

Mr. Lynn A. Williams,
c/o Williams & Bradbury,
Monadnock Block,
Chicago, Ill.

Dear Lynn:—

Up to the present writing my blueprints and data have not arrived from Louisville. I had hoped that they would be here prior to my departure for New York tonight so I could study them while away on the trip.

As soon as I return and have a chance to look at the prints, which should be one week from today, I will again write you.

Yours very truly,

JLM:LRJ.

JNO. L. MILTON.

183

Interference No. 39013—Milton vs Kane,
Milton Case 10.

November 5, 1915.

John L. Milton, Esq.,
C/o Motor Ignition & Devices Co.,
Boydell Bldg.,
40 LaFayette Blvd.,
Detroit, Mich.

Dear Sir:—

Enclosed please find the preliminary statement in the interference with Kane, pursuant to our conversation yester-

day. Please find also an envelope bearing the title of the interference, etc. as required by the Patent Office rules.

Will you please sign the preliminary statement before a Notary Public and have his seal attached. The preliminary statement is to be sealed up in the envelope bearing the title of the interference, and this envelope is in turn to be placed in another envelope addressed to the Commissioner of Patents, all as enclosed herewith. I take it you will see that the preliminary statement is thus mailed to the Commissioner of Patents in time to reach Washington on Monday, the 8th inst.

You will note that I have included the statement to the effect that certain papers have already been sent you by your brother-in-law. I have an impression that this is correct, and in accordance with what you have advised me. If, however, I am mistaken in this, you can cross out that part of the preliminary statement, or modify it by interlining to correspond with the facts. I am enclosing a carbon copy of the preliminary statement to be retained by you if you desire.

Yours very truly,

Enclosure.

185

November 19, 1915.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40 E. Lafayette St.,
Detroit, Mich.

Dear Sir:

I sent you the preliminary statement in the Kane-Milton Interference on November 5th, asking you to sign the preliminary statement and forward it directly to the Patent Office, which I have no doubt you did. We did not, however, receive any reply. Will you be kind enough to advise me whether the matter was taken care of in due course?

Yours very truly,

186

Motor Ignition & Devices Co.
40-46 East Lafayette Avenue
Detroit, U. S. A.

Nov. 20th, 1915.

Mr. Lynn A. Williams,
Monadnock Block,
Chicago, Illinois.

Dear Sir:—

The preliminary statement of the Kane-Milton interfer-

ence arrived on Nov. 6th and I forwarded it to Washington by Special Delivery in duly executed form, on the same day.

It is my plan to be in Chicago Monday at which time I will get in communication with you and deliver the Trust agreement.

Yours very truly,

JLM:LJ.

Jno. L. MILTON.

187

December 30, 1915.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40 E. LaFayette Ave.,
Detroit, Mich.

Dear Sir:

The application for your patent No. 1,096,048, which has become involved in interference with E. J. Kane, was filed on October 28, 1910. The Kane application with which your patent is in interference is a division of an application filed on February 2, 1910. Under these circumstances Kane is the senior party to the interference and you are the junior party. It is necessary that the junior party be the first to take testimony in an interference proceeding, the burden of proof being upon him to carry his dates back prior to the filing date of the senior party. You will remember, however, that the disclosure of your patent is substantially identical with the disclosure of your British patent No. 24,838 of 1909, the application for which was filed on October 28, 1909. Inasmuch as the application for your United States patent was filed within one year of the date of filing in Great Britain we are, under the statutes, entitled to take advantage of your date of filing in Great Britain.

It is our intention to obtain from the British Patent Office a certified copy of the application for your British patent 188 as originally filed and file this certified copy in the United States Patent Office, together with a motion that the burden of proof in the Milton-Kane interference be shifted, thus, in effect, making Kane the junior party and making it necessary for him to establish dates prior to October 28, 1909, before it will be necessary for us to introduce proofs in your behalf. The day before yesterday we cabled our London associates, Messrs. Dicker, Pollak & Derriman, requesting them to obtain from the British Patent Office a certified copy of your application. We are just in receipt of a cablegram advising us that our associates will have to have an authorization from you before the necessary certified copy

can be obtained. We have, therefore, prepared a blank form of authorization which if you will kindly sign and send to Messrs. Dicker, Pollak & Derriman in the enclosed envelope will enable us to obtain the necessary copy and certificate. We are not advised as to just what form of authorization will be necessary and, therefore, have merely drawn up a blank form which may be filled out in the proper manner by Messrs. Dicker, Pollak & Derriman. Enclosed herewith you will find a letter of transmittal which you may enclose with the authorization.

Yours very truly,

Enclosures.

189

Motor Ignition & Devices Co.
40-46 East Lafayette Avenue
Detroit, U. S. A.

Jan. 3rd, 1916.

Williams & Bradbury,
Monadnock Block,
Chicago, Ill.

Gentlemen:—

Complying with your request of the 30th ult. I have this day forwarded to Messrs. Dicker, Pollak & Derriman, blank authorization to be used in the interference with E. J. Kane.

Yours very truly,

JLM:LRJ.

190

Jno. L. MILTON.

January 4, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-46 East LaFayette Ave.,
Detroit, Mich.

Dear Sir:

We have your favor of January 3d, advising that you have forwarded the blank authorization to Messrs. Dicker, Pollak & Derriman.

Permit us to thank you for your prompt attention to this matter.

We shall advise you of future developments in the Milton-Kane Interference.

Yours very truly,

128

Plaintiff's Exhibit 68.

191

Motor Ignition & Devices Co.
40-46 East Lafayette Avenue
Detroit, U. S. A.

Jan. 6th, 1916.

Williams & Bradbury,
Monadnock Block,
Chicago, Ill.

Gentlemen:—

According to my best memory, there is a certified copy, either in my files or in yours, of my British patent which corresponds to the one U. S. Patent involved in the Milton-Kane interference and if there is any particular rush about getting the certified copy on file here in the United States, I will make a careful search for it.

Please advise.

Yours very truly,

JLM:LJ.

J. L. MILTON.

192

January 11, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-46 East LaFayette Ave.,
Detroit, Mich.

Dear Sir:

Your favor of the 6th instant has been received. We do not find that we have any certified copy of your British Patent which corresponds to the United States Patent involved in the Milton-Kane Interference, but we do have in our files the original grant of the British patent. Perhaps this is what you had in mind. However, what we have to obtain and file is not a certified copy of your British Patent as issued, but a certified copy of the original application for the British Patent.

Inasmuch as you signed and forwarded the authorization which we sent you, we believe that we shall be able to secure the certified copy of your original British application in ample time to make our motion to shift the burden of proof as outlined in our former letter.

Thanking you, we are,

Yours very truly,

193

May 3, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40 LaFayette Blvd.,
Detroit, Mich.

Dear Sir:

We are making a final investigation of the facts in the interference between the Webster Electric Company's patent No. 1,096,048, issued to you, and the application of Kane, and we should like very much to go over this whole matter with you again and get at the real facts as accurately as possible.

Our Mr. See will take care of the matter, and he would like, if possible, to confer with you in Detroit next Monday morning, May 8th, at which time it would be highly satisfactory if you could have with you any drawings or other data bearing on the matter.

It is highly desirable that this matter be closed up as soon as possible, and we will appreciate it very much if you will advise us by return mail if you can confer with Mr. See Monday morning, and if so, where he will find you. If Monday will not suit your convenience for this conference please advise us the earliest day after Monday that will be suitable.

Yours very truly,

194

MOTOR IGNITION & DEVICES CO.
40-46 East Lafayette Avenue
Detroit, U. S. A.

May 5th, 1916.

Williams, Bradbury & See,
1315 Monadnock Block,
Chicago, Illinois.

Gentlemen:—

Replying to your letter of the 3rd desire to advise that it would be satisfactory for Mr. See to come over Monday the 8th. inst. In the meantime, I shall gather up the drawing and data referred to.

I might state that I have been trying for at least a week to get over to Chicago and was not able to accomplish it by reason of stress of more urgent matters here and that it is now my plan to get over there next week at which time I could arrange to give you some of my time. I will leave this entirely to your judgment.

Yours very truly,

JLM:MAC

JNO. L. MILTON.

130

Plaintiff's Exhibit 68.

195

May 6, 1916.

John L. Milton,
c/o Motor Ignition & Devices Co.,
40 East LaFayette Ave.,
Detroit, Michigan.

Mr. See will be in Detroit Monday morning. Please have all data possible.

WILLIAMS, BRADBURY & SEE.

Charge to account of
Lynn A. Williams.

196

May 9, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40 East LaFayette Blvd.,
Detroit, Mich.

Dear Mr. Milton:

As I promised you, this is to make a record of the fact that I have taken from among your data relating to Milton Case 10 the following items:

1. A photograph of the experimental magneto on the end of a Field Brundage engine.
2. A photograph of the new magneto on an International Harvester engine.
3. Three photographs of the new magneto disassembled and assembled.
4. A leaflet entitled "Milton Magnetos" published by the International Harvester Company.
5. A booklet entitled "Milton Magnetos" published by the Webster Manufacturing Company.
6. A booklet entitled "Webster-Milton Low Tension Magneto" published by the Webster Electric Company.

We appreciate very much indeed the time and help which you have given to this matter and I, personally, wish to thank you for a very pleasant morning.

197 It will be a great help to us if as soon as you get to

Louisville next week you will look through your data there and send us anything that you think has a bearing on this matter. Since we must decide what is to be done and act accordingly within the next couple of weeks we hope that you can find time to dig these matters out and send them to us, if there are any, soon after you reach Louisville.

Yours very truly,

198

September 11, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-46 Lafayette Ave.,
Detroit, Mich.

Dear Sir:

As opportunity has offered Mr. See has interviewed all of the possible witnesses as to the inventorship of the unitary plug and bracket arrangement which is involved in interference No. 39,013 between your patent and the Kane application, and I have just been reviewing all of the drawings and reports of interviews and the affidavits of the various parties.

There is no question but what there is more definite and explicit corroborative evidence to support Kane's allegations than there are to support your allegations. Under the circumstances I am convinced that we would have a better prospect of sustaining the patent containing these claims if made by Kane than if made by you. Under the circumstances we should like to file a concession of priority in favor of Kane, and have drawn up such a form. Will you be kind enough to execute the original copy of this concession and return 199 it to me at your early convenience? Please be kind enough also to have two parties sign as witnesses to your signature.

For the purpose of your records I am enclosing an extra carbon copy which you may retain.

Yours very truly,

Encl.

200

Motor Ignition & Devices Co.
40-46 East Lafayette Avenue
Detroit, U. S. A.

Williams, Bradbury & See,
1315 Monadnock Block,
Chicago, Ill.

Gentlemen:—

In reply to your letter of the 1st inst. dealing with Interference No. 39,013, would say that I can not concede priority because I personally am positive that Kane is not entitled to it and second, I am by no means convinced but that sufficient Court Proofs may be found to establish this.

While my title to this particular Patent has past, I am still personally interested enough in it to see that the right sort of treatment is accorded it.

Trusting that you recognize our position in the matter, I am

Yours truly,

JNO L. MILTON.

JLM:SR

201

October 27, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-42 E. LaFayette Ave.,
Detroit, Michigan.

Dear Sir:

We have come to the conclusion that the best way to dispose of the Milton-Kane Interference is to introduce proofs, so far as possible, on behalf of both parties and put it up to the Patent Office to decide as to who is entitled to a patent containing the claims involved in the interference. We shall wish shortly to take your deposition in support of your side of the interference and shall consider it a favor if you will advise us rather promptly as to the earliest date within the next two weeks when it will be possible for you to give your deposition. The matter should not require more than a couple of hours of your time at the most.

Unless you can think of a better place to take your deposition we shall expect to take your testimony at the Poncha-train.

As we have some other matters coming up down your way during the early part of next week we shall appreciate your kindness if you can arrange to give your testimony either Tuesday or Wednesday. Will you kindly wire us collect as to what day will best suit your convenience?

Yours very truly,

202

Motor Ignition & Devices Co.
40-46 East Lafayette Avenue
Detroit, U. S. A.

October 28th 1916

Williams, Bradbury & See,
Chicago, Ill.

Gentlemen:—

In response to your letter of the 27th, we wired you this morning as follows:—

“Am leaving Detroit Monday or Tuesday for several days. See letter.”

I am under agreement with my associates to be in Cleveland

for Monday Morning, however, owing to the fact that the factory is entirely torn up for a move to Cleveland, I am so busy that I am not be able to get away Monday and accordingly have planned to leave Tuesday. Even if I should be here all day Tuesday, I would not be able owing to the condition just mentioned.

I have advised your office regarding this move. You no doubt realize that moving a plant, office and our entire work to another city is a very serious, trying undertaking.

This being my position I can not see how it will be possible for me to give you my deposition in a week or ten days.

I am not moving my home at the present time and no doubt I can arrange to meet you here in Detroit some time later on in the month. Trusting this will be satisfactory and regretting that I can not accommodate you on the proposed date, I am

Yours truly,

MOTOR IGNITION & DEVICES COMPANY

JNO. L. MILTON.

JLM:SE

203

(Western Union Telegram Heading.)

Received at Jackson Boulevard and La Salle St., Chicago. Always open

1916 Oct 28 AM 8 27

C15De 12 Coll

Fy Detroit Mich 915A 28

William Bradbury and See

X 48

1315 Monadnock Bldg Chicago Ills

Am leaving Detroit Monday or Tuesday for several days
See letter

J. L. MILTON.

204

December 1, 1916.

Mr. John L. Milton,

c/o Motor Ignition & Devices Co.,

40-42 LaFayette Ave.,

Detroit, Michigan.

Dear Sir:

The time in which to take testimony in your behalf in the Milton vs. Kane Interference has now expired and Kane's time for the taking of rebuttal proofs has commenced to run. In view of the numerous extensions of time heretofore granted in this interference the Patent Office has indicated that it

will not grant further extensions. Therefore, if we are to take testimony in your behalf it will be necessary to do so before December 15th, or, in other words, before the expiration of Kane's time for introducing rebuttal proofs. We can stipulate that your testimony may be taken during Kane's time without resetting the date for final hearing. You will, therefore, see that if we are to take your testimony the matter must be given immediate attention. Will you kindly advise us at your earliest convenience whether or not you can see your way clear to give this testimony before December 15th, as outlined above?

Yours very truly,

205

(Letterhead of The Teagle Company.)

Cleveland, O. Dec. 5, 1916.

Williams, Bradbury & See,
Chicago, Ill.

Gentlemen:

The proposition of moving our Factory and my house-hold affects has been a very big undertaking and accordingly has consumed all of my time. Even tho I have not finished with this work, I am leaving tonight or not later than tomorrow for New York to be absent until next week. If it is possible to arrange to give my testimony before Dec. 15th—I will most certainly do so.

Yours truly,

JNO. L. MILTON

Per.....

M(S

206 AGM:KH

December 18, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-42 E. LaFayette Ave.,
Detroit, Michigan.

Dear Sir:

Under date of December 1st we wrote you with reference to taking your testimony in the Milton vs. Kane Interference and under date of December 5th you advised us that if you could possibly do so you would endeavor to give your testimony before December 15th. That date has now passed and the only way in which your testimony may be taken and used will be to stipulate that it may be taken nunc pro tunc as of an earlier date. If you can arrange to give your testimony

within the next week or ten days we are hopeful that it will not be too late to be of value. Will you, therefore, kindly advise us immediately whether or not you can see your way clear to attend to this matter within that time.

Yours very truly,

207 (Letterhead of The Teagle Company.)
Cleveland, O. Dec. 26, 1916.

Williams Bradbury & See,
719 Monadnock Block,
Chicago, Ill.

Gentlemen:

The strain of breaking up our Factory and Office as well as its organization and trying to re-organize my home during the past two months has proven more than I could stand. Last Monday, week ago, I left the office and have been ill and unable to attempt to do any work until this morning.

I find your letter of Dec. 18th, which I regret has remained un-answered. Even tho there has been volumes of important work unfinished during this move and still is, I will make a special effort to give you the testimony for which you have asked. I have not and will not have an opportunity to go thru any of my records, so I would ask your representative to bring with him the records, whihe we went over when I was in your Office in Chicago, these will serve to refresh my memory on the subject.

I would suggest that the testimony be taken in the afternoon and to have a preliminary conference in the morning of a given day. I do not know the significance or ethics of the taking of a testimony at a later date and as of an earlier date as you suggest. Before giving the testimony I will get enlightenment on the subject.

I regret that it has been physically impossible for me to to try to attend to the business demands of my own Company, and still to have not found time to serve you in this matter.

Yours truly,

JNO. L. MILTON

M(S)

AGM:KH

December 27, 1916.

Mr. John L. Milton,
c/o The Teagle Company,
1125 Oregon Ave.,
Cleveland, O.

Dear Sir:

We are in receipt of your letter of December 26th and are very sorry to learn that you have been ill. We are very glad to know, however, that you are now able to get back to matters of business.

We note that you will, in all probability, be able to give your testimony in the Milton-Kane Interference within a week or so. Almost any day that will suit your convenience will be all right with us. We should, however, take care of the matter rather promptly and we would suggest that you give your testimony just as soon after January 2nd as you possibly can. We think your suggestion that a conference be had in the morning, testimony to be taken in the afternoon, is a good one and we shall arrange to be in Cleveland early in the morning on the day you are to give your testimony.

Trusting that you will advise us promptly as to the date that will best suit your convenience, we are

Yours very truly,

RMS:KH

2/5/19
F. W.
May 12, 1916.

Mr. Wm. Kroeplin,
3116 Prytania St.,
New Orleans, La.

Dear Sir:

We have just learned from Mr. Bowden of the Webster Manufacturing Company that you are at the above address and that you would not be back in Chicago for some time and so we must ask you by letter what we had desired to talk with you about.

The Webster Electric Company is involved in an interference between the Milton patent No. 1,096,048 and an application for patent filed by Edmund J. Kane, but the Webster Company has subsequently purchased the Kane application so that it now owns both the Milton patent and the Kane application and the invention which is shown in both. There remains the question, however, of deciding, as a matter of law, whether the Webster Company should claim the invention through the Milton patent or through the Kane application and we have been endeavoring to learn from the men who were with the company in 1909 when this invention seems to have been made what the facts are.

The specific point involved is the substitution of direct contact between the yoke on the magneto shaft and the adjustable screw threaded in an arm on the movable electrode shaft, in place of the old line construction, also the mounting of the generator and the spark plug in a unitary structure which can be installed on an engine and removed without destroying the adjustment between the electrodes and the generator.

We will appreciate it very much indeed if you will think this proposition over and write us at your earliest convenience as fully as you can anything that you think may throw any light on the design of this construction both as to when it was done and by whom it was done. Mr. Milton told us that you had made many of the sketches which served as a basis for patent office drawings and perhaps you may have some of those sketches or some notes or remembrances concerning them.

Our time to act in this matter is short and we would like to have you reply as soon as possible.

Yours very truly,

212

PLAINTIFF'S EXHIBIT 68B

2/5/19 F W

New Orleans 5/15/16.

Williams, Bradbury & See

Chicago Ill

Gentlemen:—

In answer to your letter of the 12th regarding the patents owned by the Webster Electric Co. I do not have any prints of the drawings and sketches I made of details for the mag-

neto. I never knew that Mr. Kane made any application for patent on an attachment of the Milton Magneto. The substitution of parts you refer to in your letter must have been made after I left the Webster Electric Co at Tiffin Ohio as I can not recall any of the changes referred to.

If you would send me a sketch of the attachments in question, or catalogue cut marking out the parts; I may remember some of the changes. I will answer any other questions you may desire.

Yours Very Truly

WM. A. KROEPLIN

213

PLAINTIFF'S EXHIBIT 68C

RMS:KH

2/5/19

F.W.

May 18, 1916.

Mr. Wm. A. Kroepelin,
3116 Prytania St.,
New Orleans, La.

Dear Sir:

We have your letter of May 15th, and in answer we enclose a catalogue showing the construction the original design of which we are interested in.

Referring to Figures 2 and 3 on page 3 and to Figure 5 on page 5 you will note that the spark plug is mounted in a plate to be attached to the cylinder; that this plate carries an integral bracket or support which forms a bearing for the inductor shaft and by which the generator and other parts co-operating with it are supported; and that the electrode shaft carries an arm in which is mounted an adjustable screw to be struck by one arm of the yoke on the inductor shaft.

Our information, gathered from several witnesses, is that before this compact structure was designed and its manufacture commenced the company was building a structure in which the generator and its trip were supported on a boss along the side of the cylinder considerably removed from the spark plug; and that an arm on the inductor shaft was connected with an arm on the electrode shaft in the spark plug by a long rod or link. It is the designing of this new structure illustrated in the catalogue and the change to this
214 structure from the old one just referred to in which we are especially interested.

Even if you haven't any of the sketches, letters, or other written data relating to this matter we will appreciate it very much if you will write us fully anything that you may remember tending to show who may have designed this.

Your prompt reply will be greatly appreciated and we must also ask you to return this catalogue as it is the only copy we have.

Yours very truly,

Enclosure.

215

PLAINTIFF'S EXHIBIT 68d.

New Orleans 5/20/16.

Williams Bradbury & See

Chicago Ill

Gentlemen:—

In answer to your letter of the 18th regarding the Milton Magneto. The attachments you refer to in your letter and as shown in the catalogue which I am returning herewith must have been made after I left the Webster Electric Co. in the year 1909. In fact I am sure they were because I visited the Webster Electric Co. plant a year or so after I left them and noted improvements on the machine. I do not know who designed these new attachments.

I know of no other information that I can give you relating this machine.

Yours very truly

WM. A. KROEPLIN

218

PLAINTIFF'S EXHIBIT 74.

Tiffin Malleable Iron and Chain Co.

H. L. Waterbury, Prest.

T. K. Webster, Jr. Treas.

A. W. Bass, Secy.

Tiffin, Ohio Sept. 9th 08

Dear John—

I certainly hope your inventive genius will help you out in the Cadillac proposition. We are playing for big stakes. It will mean if we win \$18000 per year for you, and put us all on easy street so we must not fail. I just called up Mr.

Leland on the Phone and he will write you about the Engine today. I hope you take good care of yourself as your thinking machine is so much better when the stomach is right.

Yours truly

T. K. WEBSTER

PLAINTIFF'S EXHIBIT NO. 75.

(Postal Telegraph Telegram.)

Received at

18 CH. FT FA. 13 Collect 907a 664 S. Halsted St., Chisago.
(Where any reply should be sent.)
Telephone Canal 1385.

New York May 7-09
The Webster Mfg. Co.
Chgo. Ill.

Got the magneto on car last night made its initial run satisfactorily.

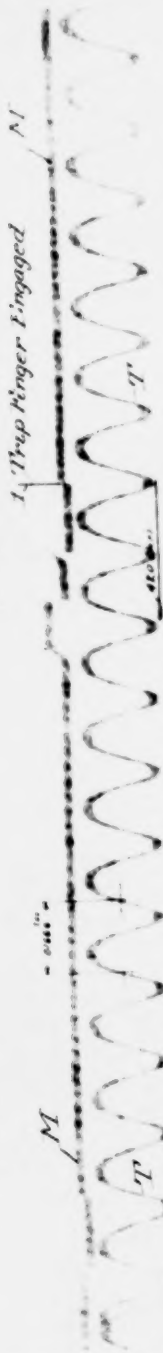
T. K. WEBSTER.

Original delivery of this telegram was made by telephone.

Gallogram b Defendants Device Type '3

← 1 inch = .0267 seconds

1 inch
Electrodes Separated
3.1 Trip Finger Released
0.0092 sec



Start

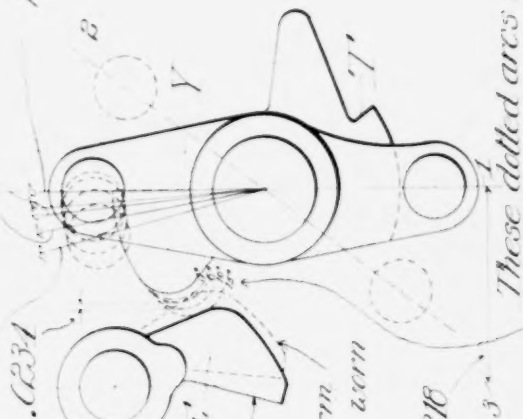
2.34 Amps
1.52 Amps
0.46 Amps

WESTERN ELECTRIC CO
WALLINGFORD, CT
DEC 10 1954

Maximum power is obtained from the
 engine between these two striking
 positions of the yoke.

Position of yoke when striking
 electrode arm with new contacts.

Actual dimension .6234



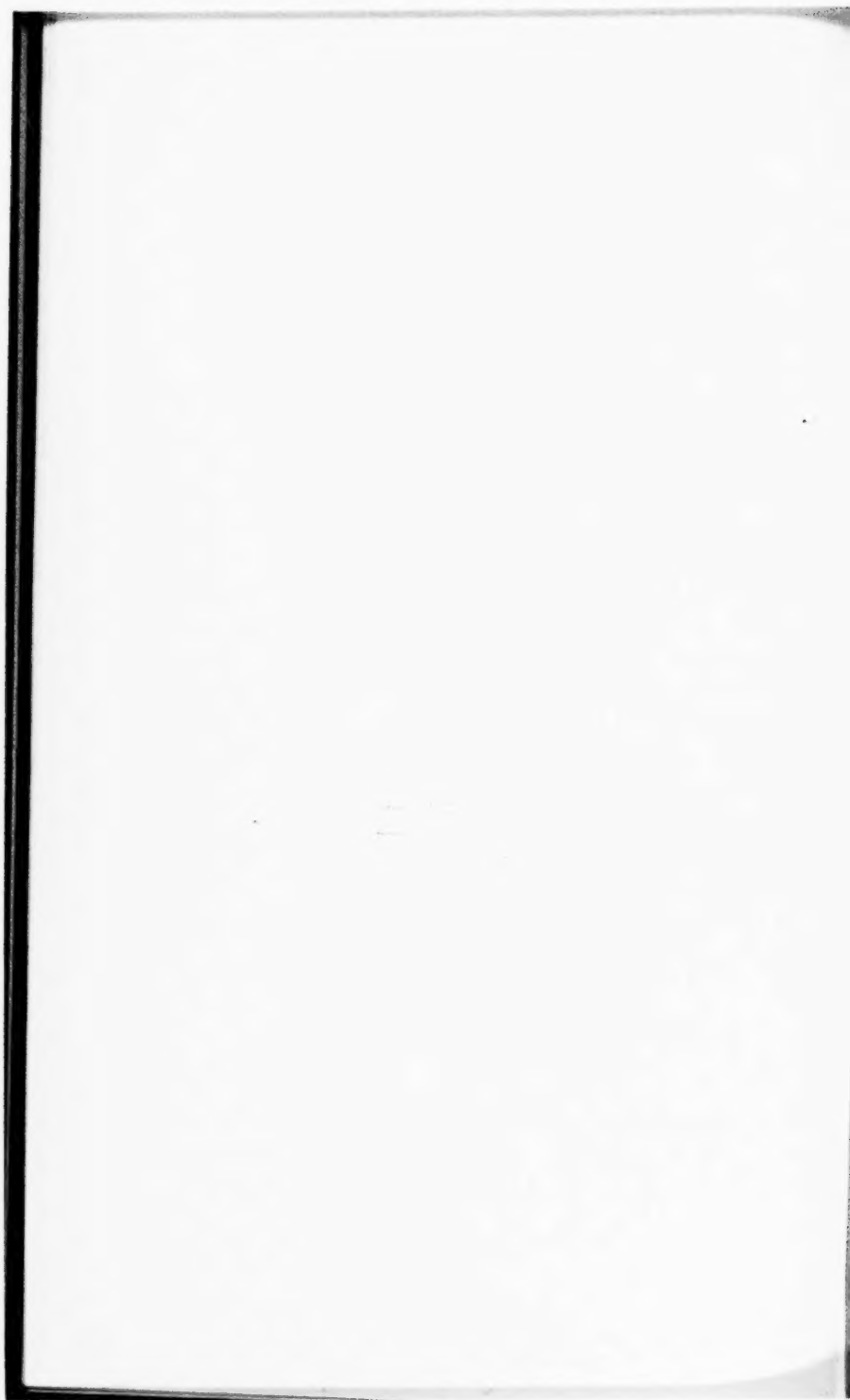
First position of yoke.

Position of electrode arm
 when contacts are new.

Position of electrode arm
 when contact points are worn

Actual dimension .9218

These dotted areas represent the
 engaging surface of the rotor arm
 in the several striking positions.



223

PLAINTIFF'S EXHIBIT 80.

Trust Agreement.

This Agreement, made and entered into this 11th day of December, A. D. 1915, between John L. Milton, formerly of Louisville, County of Jefferson, and State of Kentucky, and now a resident of Detroit, Michigan, party of the first part, and Webster Electric Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and formerly having its principal place for doing business in the City of Tiffin, County of Seneca, and State of Ohio, and now having its principal place for doing business in the City of Racine, Wisconsin, party of the second part, Witnesseth: That

Whereas, the parties hereto did on the tenth day of April A. D. 1912, enter into a certain escrow agreement, copy of which is hereto attached and hereby made a part hereof, under which escrow agreement the said John L. Milton executed a certain blank assignment of the whole right, title, and interest in and to his inventions and improvements disclosed in the following named United States Letters Patent and applications for patents, and in and to the following United States Letters Patent and applications for patent:

Case	Serial No.	Filed	Allowed	Issued	Improvement
1	307,391	3/22/06	11/5/09	5/31/10	Electric Gen- #959,954 erators.
2	357,041	2/12/07			Inductor Gen- erators.
3	379,485	6/17/07			Inductor Gen- erators for Ig- nition Purposes
5	443,608	7/15/08			Magneto Igni- tion Apparatus
224					
9	475,171	1/30/09			Apparatus and Method for Generating Al- ternating Cur- rents.
10	589,654	10/28/10			Magneto Gen- erators,

which said assignment was dated the tenth day of April, A. D. 1912, a copy of which is hereto attached and hereby made a

part hereof, and which said assignment was delivered to Lynn A. Williams, of Chicago, Illinois, who, on the tenth day of April 1912, accepted the escrow hereinabove referred to, and who consented and agreed to act as escrow in accordance with the terms of the said escrow agreement of April 10, 1912; and

Whereas, in the said blank assignment said John L. Milton sold, assigned, and transferred all rights and causes of action and suit resulting from infringements of the said patents which may have occurred at any time during the life of said patents; and

Whereas, it is the desire of the said Webster Electric Company to have recorded in the United States Patent Office an assignment of the said inventions, patents, and applications for patents; and

Whereas, it is the desire of the parties hereto to establish a Trust under which the parties hereto shall be the beneficiaries and under which the said Webster Electric Company may put itself in position to maintain suits and actions for infringements of the said patents, and of the said John L. Milton to secure the payment of certain promissory notes referred to in the said escrow agreement;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements of the parties hereto,

and of One Dollar (\$1.00) in hand paid by each of the 225 parties hereto by the other, receipt whereof is hereby acknowledged, it is mutually agreed as follows:

1. It is mutually understood and agreed that upon his acceptance of the Trust herein created, and upon his agreement to act by and for the said parties hereto as Trustee in accordance with the terms and conditions hereof, the said Lynn A. Williams, of Chicago, Illinois, shall be and is hereby appointed Trustee for the benefit of the parties hereto.

2. The said John L. Milton hereby authorizes and directs the said Lynn A. Williams to supply his name, as Trustee, to the blanks in the aforesaid assignment whereby the said Lynn A. Williams, Trustee, shall become the assignee of the said John L. Milton as to the inventions, patents, and applications for patents therein enumerated.

3. It is mutually understood and agreed that the said Lynn A. Williams shall take and hold the title and interest conveyed to him as Trustee by the said assignment under the terms and conditions of the escrow agreement hereinabove referred to for the benefit of the parties hereto; that the said

Lynn A. Williams, Trustee, shall not execute or deliver any assignment or transfer of any right, title, or interest in or to any of the aforesaid inventions, patents, or patent applications, unless and until the promissory notes referred to in the aforesaid escrow agreement shall have been paid by the said Webster Electric Company to the said John L. Milton, or his order, or unless or until there shall have been a default in the payment of one or more of the said notes, as in the said escrow agreement provided for; that upon 226 proof of the payment of all of the said notes by the said

Webster Electric Company to the said John L. Milton, or his order, the said Lynn A. Williams, Trustee, shall and is hereby authorized to execute in favor of the said Webster Electric Company, or its nominee, an assignment of the whole right, title, and interest in and to the said inventions, patents, and applications for patents, in the terms substantially identical with those of the aforesaid assignment executed by the said John L. Milton under date of April 10, 1912; that in the event of a default on the part of the Webster Electric Company in meeting or paying any of the aforesaid notes when due, and upon proof of such default, the said Lynn A. Williams, Trustee, shall notify the said Webster Electric Company of the said default and if within fifteen (15) days thereafter the said Webster Electric Company shall not have made payment to the said John L. Milton of any and all notes theretofore matured and with interest, as in the notes provided, then the said Lynn A. Williams, Trustee, shall upon ten (10) days' notice in writing to the said Webster Electric Company and the said John L. Milton sell to and execute in favor of the highest bidder an assignment of the whole right, title, and interest in and to the said inventions, patents, and applications for patents in terms substantially identical with those of the aforesaid assignment executed by the said John L. Milton under date of April 10, 1912, and shall apply the proceeds of the said sale to the payment to the said John L. Milton, or his order, of any and all of the said notes remaining unpaid by the said Webster Electric Company at the time of such sale and shall turn over to the said Webster Electric Company the remainder of the proceeds of such sale, if any.

227 4. It is mutually understood and agreed that the said Lynn A. Williams, Trustee, shall be and hereby is authorized to commence and maintain in his own name, and if necessary or desirable in the names of the parties hereto,

as beneficiaries under the trust hereby created, any and all such actions at law or suits in equity against infringers of any or all of the aforesaid patents, or the patents which may have resulted or which may result from the filing and prosecution of the patent applications aforesaid, provided, however, that all such actions at law or suits in equity shall be commenced and maintained only at the instance of the said Webster Electric Company and that any and all such actions or suits shall be directed and controlled by the Webster Electric Company and that the expenses and costs of any such action or suit shall be borne entirely by the said Webster Electric Company and in no event and in no part by the said John L. Milton, and provided also that any and all recoveries of damages, profits, costs, or otherwise, as a result of any and all such suits shall inure to the benefit of the said Webster Electric Company.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the said Webster Electric Company by its duly authorized officers, as of the day and year first above written.

JOHN LEWIS MILTON (Seal)
WEBSTER ELECTRIC COMPANY,
By WALTER BROWN
Vice President.

(Seal)
Attest:

S. W. LOEB
Secretary.

228

Acceptance of Trust.

I, Lynn A. Williams, of Chicago, Illinois, hereby accept the Trust herein and hereby created and consent and agree to act as Trustee in the aforesaid matter in accordance with the terms and conditions of the above agreement.

Dated at Chicago, Illinois, this 11th day of December, 1915.
LYNN A. WILLIAMS

229

Escrow Agreement

This Agreement, made and entered into this 10th day of April, A. D. 1912, between John L. Milton of Louisville, in the County of Jefferson, and State of Kentucky, party of the first part, and Webster Electric Co., a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and having its principal place for doing busi-

ness in the City of Tiffin, County of Seneca, and State of Ohio, party of the second part,

Witnesseth: That

Whereas, said party of the second part is indebted to the party of the first part in the just and true sum of Fifteen Thousand Dollars (\$15,000.00) as evidenced by Seventy-five (75) promissory notes, for the amount of Two Hundred Dollars (\$200.00) each, and each bearing interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D. 1913: the said notes being payable at intervals of one month beginning on the first day of May, A. D. 1913, the said notes having been signed by the party of the third part, by its duly authenticated officers and having been made payable to the order of the party of the third part, and having by agreement been turned over to Lynn A. Williams, a resident of the City of Evanston, in the County of Cook and State of Illinois, for the benefit of the party of the first part hereto; and

Whereas, the said party of the second part is desirous of securing to the party of the first part the payment of each and all of said notes at or before its maturity; and

Whereas, in order to furnish security for the payment of the said note to the order of the party of the first part, said parties hereto are desirous of placing or having placed in escrow a certain assignment of certain inventions and

Letters Patent and applications therefor of said party 230 of the first part, which said assignment is to be held and delivered by the escrow holder, as mutually agreed and subject to certain conditions hereinafter specified;

Now, Therefore, in consideration of the premises and of One Dollar (\$1.00) by each in hand paid to the other and receipt whereof is hereby acknowledged,

It Is Agreed As Follows:

1. That the original assignment heretofore mentioned, duly executed by the party of the first part and a copy of which is attached hereto for purposes of reference, and as such made a part hereof, shall be delivered to, held by and remained in escrow with Lynn A. Williams, of the City of Evanston, County of Cook, and State of Illinois, until said party of the second part shall have paid to the order of the party of the first part each and all of the said notes for Two Hundred Dollars (\$200.00) each and each bearing interest at the rate of five (5%) per cent. per annum from and after the first day of May, A. D. 1913, and which said notes mature on

the first day of May, A. D., 1913, and successively thereafter on the first day of each of the seventy-four (74) months succeeding, to the total amount of Fifteen Thousand Dollars (\$15,000.00) whereupon said escrow holder shall turn over and deliver to the party of the second part the said assignment duly executed by the party of the first part; provided, however, that in the event that the said party of the second part shall fail to pay any of said notes with interest at maturity, and when presented for payment by the said party of the first part, or his order, then said escrow holder, upon being advised in writing of the said default, shall, upon proof of such default, notify the party of the second part in writing of the said default, and if, within fifteen (15) days thereafter the party of the second part shall not have made payment to the party of the first part of any and all notes theretofore matured and with interest as in the notes provided, then
231 the escrow holder shall, upon ten (10) days' notice in writing to the party of the first part and to the party of the second part, sell and turn over to the highest bidder the said blank assignment of patent applications and patents described therein, and shall apply the proceeds of said sale to the payment to the party of the first part or his order of any and all of the said notes remaining unpaid by the party of the second part at the time of such sale, and shall turn over to the party of the second part the remainder of the proceeds of such sale, if any.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the party of the second part by its duly authorized officers, as of the day and year first above written.

JOHN L. MILTON (Seal)
WEBSTER ELECTRIC Co.
by T. K. WEBSTER
President.

Attest:

EMIL PODLESAK,
Secretary.

Acceptance of Escrow

I hereby accept the original assignment from John L. Milton to Webster Electric Co., referred to in the foregoing original agreement between said parties and consent to act

as escrow in the matter in accordance with the terms of said agreement.

Dated at Chicago, Illinois, this 10th day of April 1912.

LYNN A. WILLIAMS

233 Received and Recorded on the 13th day of December 1915 in Liber D, 99, page 86 of Transfers of Patents.

Original Assignment sent to the Webster Electric Co. on June 28, 1918.

232

Assignment

For and in Consideration of the sum of One Dollar (\$1.00) to me in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, I, John L. Milton, of Louisville, in the County of Jefferson, and State of Kentucky, do hereby sell, assign and transfer unto Lynn A. Williams, Trustee of Chicago, Illinois, the whole right, title and interest in and to my inventions and improvements disclosed in the following named United States Letters Patent and applications for patent and in and to the following United States Letters Patent and applications for patent:

Case	Serial No.	Filed	Allowed	Issued	Improvement
1	307,391	3/22/06	11/5/09	5/31/10	Electric Gen- #959,954 erators.
2	357,041	2/12/07			Inductor Gen- erators.
3	379,485	6/17/07			Inductor Gen- erators for Ig- nition Purposes
5	443,608	7/15/08			Magneto Igni- tion Apparatus
9	475,171	1/30/09			Apparatus and Method for Generating Al- ternating Cur- rents.
10	589,654	10/28/10			Magneto Gen- erators.

the said right, title and interest to be held and enjoyed by the said Lynn A. Williams, Trustee, for its own use and behoof and for the use and behoof of its successors and assigns to the full end of the term for which said Letters Patent are

and may be granted, as fully and entirely as the same 234 would have been held and enjoyed by me had this assign-

ment and sale not been made, and I hereby sell, assign and transfer to Lynn A. Williams, Trustee all rights and causes of action and suit resulting from infringements of said patents which may have occurred at any time during the life of said patent and prior to the date hereof, and I further hereby sell, assign and transfer unto said Lynn A. Williams, Trustee, the whole right, title and interest in and to any inventions and improvements relating to Low Tension Ignition Apparatus and System which I have made, and I agree to execute all papers, including formal assignments, which may be necessary or expedient to enable said Lynn A. Williams Trustee to obtain and acquire patents thereon and legal title thereto.

I Authorize and Request the Commissioner of Patents to issue the patents which may be granted on said applications to said assignee for the sole use and behoof of said assignee, its successors and assigns.

In Testimony Whereof, I have signed my name and affixed my seal at Chicago, Illinois, as of the 10th day of April, A. D. 1912.

JOHN L. MILTON (Seal)

State of Illinois }
County of Cook } ss:

Be it remembered that on this 10th day of April 1912, before me, Leonard W. Novander, a Notary Public, duly commissioned, qualified and acting in and for the County and State aforesaid, came John L. Milton, personally known to me to be the identical person whose name is subscribed to the foregoing instrument of writing and acknowledged that he executed and signed the same as his free act and deed for the purposes and consideration therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

LEONARD W. NOVANDER
Notary Public.

237

PLAINTIFF'S EXHIBIT 81.

Wisconsin ex rel Podelsak vs. Webster Electric Co.

May 11, 1917, 10:00 o'clock A. M.

Parties met pursuant to adjournment before said Commissioner.

Present: Mr. Wright, and Mr. Simmons, counsel for defendant; the plaintiff appearing neither in person or represented by counsel.

Mr. Frederick Secord appeared as attorney in behalf of the witness Frederick C. Manning.

FREDERICK C. MANNING, a witness called on behalf of the defendants herein, and residing at Chicago, Illinois, pursuant to a writ of dedimus potestatem issued out of the said District Court of the United States for the Eastern District of Wisconsin attached hereto and returned herewith, being duly cautioned and sworn to tell the whole truth, and being carefully examined upon oral interrogatories, deposes and says as follows:

Direct Examination by Mr. Wright.

Q. What is your name, please?

A. Frederick C. Manning.

Q. Where do you reside?

A. My residence is 3631 Pine Grove Avenue, Chicago.

Q. What is your business?

A. I am manager of the Sumter Electrical Company, Chicago.

238 Q. Are you an officer of the Sumter Electrical Company?

A. Yes, sir; I am president.

Q. What company do you refer to—what is the official title of that company?

A. It is just as I stated it here—Sumter Electrical Company.

Q. Under what State is it organized?

A. A corporation of Illinois.

Q. You are now the president of the Sumter Electrical Company organized under the laws of the State of Illinois?

A. Correct.

Q. When was that company organized?

A. I think it was during October of 1915, as well as I remember.

Q. Haven't you got a good memory?

A. Fairly.

Q. Well, then you know, don't you, when that company was organized, you being its president?

A. Not without referring to the records; no, sir.

Q. You cannot tell within a month when it was?

A. I have stated that it was, as near as I remember, October, 1915.

Q. What was your business prior to that time?

A. I was vice president and secretary of the Sumter Electrical Company of Sumter, South Carolina.

Q. When did that company go out of business?

A. I could not tell you.

Q. Did it go out of business at about the same time that you became president of the Sumter Electrical Company of Illinois?

239 A. Afterwards.

Q. When did it vote to go out of business?

A. I don't remember.

Q. Were you an officer of that company?

A. Was I an officer?

Q. Yes.

A. Yes, sir.

Q. What was your office that you held?

A. Just as I have stated here—vice president and secretary.

Q. Up to the time it went out of business?

A. Yes, sir.

Q. So you mean to say that as vice president and secretary of that company you do not recall when it went out of business?

A. No, sir.

Q. You don't recollect when it voted to go out of business?

A. No, sir. Those facts can be very easily established, but I don't remember the dates.

Q. Who has the books of this Sumter Electrical Company of South Carolina?

A. I couldn't tell you.

Q. You were the secretary of the company when it went out of business?

A. Yes, sir.

Q. And as such you held possession of those books?

A. Personally I did not.

Q. Who did?

A. They were retained at the office of the Sumter Electrical Company in South Carolina.

Q. Where, at Sumter?

A. Yes, sir.

Q. And that is where they are now, so far as you know?

A. That is where they are now so far as I know, there.

240 Q. Do you know Henry J. Podlesak?

A. Yes, sir.

Q. When did you first meet him?

A. Some five or six years ago, I suppose.

Q. Do you know Mr. Kratsch?

A. Yes, sir.

Q. What is his position?

A. He is treasurer of the Sumter Electrical Company of Illinois.

Q. Was he appointed treasurer of that company at the same time that you were appointed its president?

A. Yes, sir.

Q. What was his position with reference to the Sumter Electrical Company of South Carolina?

A. He was a salesman.

Q. Did he hold any office under that organization?

A. No, sir.

Q. Did Mr. Kratsch have any correspondence with you with reference to Mr. Podlesak subsequent to, say, the 1st day of May, 1915?

A. I don't remember.

Q. Your memory is not good as to any correspondence that you may have had with Mr. Kratsch with reference to Mr. Podlesak?

A. No, sir.

Q. Where were you living on or about the 4th day of August, 1915?

A. I was living in Chicago.

Q. On or about the 4th day of August or shortly prior thereto did you send for any representative of the Sumter Electrical Company of South Carolina to meet you in Chicago and discuss with you the question of purchasing any patents or rights thereto from Henry J. Podlesak?

241 A. I did, but I don't remember whether that was the

date. I remember distinctly that the gentleman came here to discuss that matter with me.

Q. Who was he?

A. Mr. H. R. Van Deventer.

Q. What was the position which he held with respect to the Sumter Electrical Company of South Carolina?

A. Why, he was—I am just trying to remember whether he had any official connection with the organization. I don't think he did. He was a patent attorney in a sense, and assistant to myself there for a great many years.

Q. Assistant to yourself, you say—you mean when you were in Sumter, South Carolina?

A. When we were in Sumter, yes, sir.

Q. And not only in the employ of the Sumter Electrical Company—

A. Yes, sir.

Q. —he was likewise in the employ of that company as its attorney, was he?

A. Not exactly as its attorney. He grew up in the organization, and he became active in its patent affairs.

Q. Then he was a stockholder and officer—is that what you mean?

A. He was not an officer, I say.

Q. Well, what was his relation to the company so that he grew up with it?

A. An employee.

Q. What was the nature of his employment?

A. Office work, sales work, engineering work and the patent work.

242 Q. Then he was employed in the office of that company, you mean to say, as a patent attorney?

A. I don't know that he was employed as a patent attorney, but he did work of that character and was a patent attorney.

Q. And was in the employ of the Sumter Electrical Company?

A. Yes, sir.

Q. And didn't do anything else but work for the Sumter Electrical Company?

A. I think he did; yes, sir.

Q. Please answer the question.

A. Yes, sir; he wrote a book on telephony, I remember is one thing he did.

Q. Was he engaged in any other occupation, or was he

employed by any other person than the Sumter Electrical Company of Sumter, South Carolina?

A. Not that I know of.

Q. Then he was employed exclusively by that company?

A. So far as I know.

Q. Well, don't you know?

A. No.

Q. Were you an officer of that company?

A. Yes.

Q. Don't you know whether your employee is in your employment or not?

A. Well, when he is doing my work, that is all I am interested in.

Q. What work was he doing for you?

A. Just what I have stated above there in my testimony.

Q. Well, state it.

A. Well, he was doing some patent work, engineering work, sales work, catalogue work. I suppose that is sufficient.

243 Q. Was he under your direction?

A. Not entirely.

Q. Under whose direction was he?

A. Well, various officers there. He was not under the direction of any one in particular, but most of his work was done in co-operation with myself.

Q. Was he an electrical engineer?

A. I would consider him an electrical engineer; yes, sir.

Q. And an expert along the line of electrical development and investigation?

A. Well, that is a rather broad term; but I think he is an electrical expert.

Q. Well, you considered him an expert so that you desired to have him take charge of your expert electrical work in your company, of which you were at that time vice president, didn't you?

A. No, he didn't do that at all. He assisted.

Q. What?

A. I stated that he assisted in work of that kind. His work was varied.

Q. Was there any other electrical engineer there besides Mr. Van Deventer?

A. Yes, sir.

Q. Who was he?

A. Mr. C. T. Mason.

Q. Was Mr. Mason the subordinate or the superior of Mr. Van Deventer?

A. Superior.

Q. What was his position?

A. President of the company.

Q. Well, he was not employed then as an electrical expert, was he?

A. Who.

244 Q. Mr. Mason.

A. Mr. Mason was the chief engineer of the company.

Q. And also president?

A. Yes, sir.

Q. Was Mr. VanDeventer or was he not a stockholder of the Company?

A. I don't think he was at that time.

Q. You were secretary of it?

A. Yes, sir.

Q. And you don't know?

A. I don't know.

Q. When you wanted to have anybody come in here to Chicago to give you some advice with reference to inventions you sent for Mr. VanDeventer?

A. I don't remember just how that came about; but I know that I wanted Mr. VanDeventer here at that time.

Q. Because he was an expert to advise you?

A. Yes, because he knew more about the matters that I had under consideration than anyone else.

Q. What matters do you refer to when you speak that way?

A. To the matters that you referred to a minute ago when I asked these gentlemen to come here for a conference.

Q. That is, the patents that were owned by the Podlesak brothers, and he knew all about them?

A. I don't know whether he knew all about them.

Q. Well, he knew more than you did?

A. Yes, sir.

Q. And he was the employee of the Sumter Electrical Company of South Carolina who knew the most about them?

A. I don't know that.

245 Q. Well, you sent for him?

A. Yes, sir.

Q. And you sent for him to advise you as an officer of that company with reference to the Podlesak patents—is that true?

A. Yes, sir.

Q. I have before me a little brochure containing seventy-one pages. It bears upon the cover the legend—

A. Let me interrupt you one minute right here. I have made a definite statement here which I want to modify: You asked me if I sent for Mr. VanDeventer to come here and give me certain information. Well, I cannot say that I sent for Mr. VanDeventer. I think Mr. VanDeventer came here as the result of some correspondence or something of that kind. I don't think I sent for him to come here; so I want to make that point clear. I don't know what you are getting at, but I don't want to be misunderstood in the matter.

Q. Then he was sent by somebody in authority down there, in reply to your letters?

A. No, he may have come of his own accord.

Q. But he came to meet you?

A. Yes, sir.

Q. And you two gentlemen proceeded to take up the Podlesak negotiations for these patents?

A. Well, not only we two gentlemen; there were others.

Mr. Wright: What was that answer?

A. (Read by the Commissioner)

Q. What others?

246 A. Mr. Clement, Edward E. Clement, of Washington.

Q. Who was he?

A. He is an attorney there associated with Mr. VanDeventer in the patent work.

Q. Then he has acted for the Sumter Electrical Company of South Carolina with reference to their patent litigation?

A. Yes, sir.

Q. He is thoroughly familiar—he was at that time thoroughly familiar with the patent litigation and the field covered by the patents of the Sumter Electrical Company of South Carolina, was he?

A. He was handling their patents. I don't know how familiar he was with any of them.

Q. Well, you were an officer of the company?

A. Yes, sir.

Q. He would not have been handling their business if he was not familiar with them, would he?

A. Well, that matter was up to Mr. VanDeventer and Mr. Mason. I didn't pay attention to that at all.

Q. Was there any other patent attorney besides those gentlemen who was connected with Mr. Clement?

A. Not that I know of.

Q. How did he come on at just the moment that Mr. VanDeventer left South Carolina and came up here to see you?

A. He came with Mr. VanDeventer.

Q. Then he went from Washington to South Carolina and then came from South Carolina with Mr. VanDeventer to Chicago?

A. I don't know.

247 Q. Well, they were together when they came here, were they?

A. That is what I said; yes, sir.

Q. Well, is it true that they were together when they came here?

A. That is what I said; yes, sir.

Q. You did not say it.

A. You asked me—

Q. I want to have you say it. If you take your hand down from your mouth and answer these questions we will get along better. Now, were they together or were they not when they came to Chicago?

A. I could not tell you.

Q. Where did they meet you?

A. At my—I was going to say at my office, but I don't remember; possibly it was at the hotel.

Q. They were stopping at the hotel here in Chicago?

A. Yes, sir.

Q. Where?

A. At the Great Northern.

Q. And when they got here they sent for you?

A. I don't remember.

Q. Well, did you go there?

A. I presume I did.

Q. Well, do you know whether you went there and met those two men?

A. I know I was there with them at the Great Northern Hotel.

Q. At their room?

A. Yes, sir.

Q. You three gentlemen?

A. Yes, sir.

Q. And you immediately began to confer with reference

to the purchase of these patents of Henry J. Podlesak
248 by the Sumter Electrical Company of Sumter, South
Carolina?

A. I presume we did.

Q. Do you know whether you did or not?

A. Well, that is what they came here for, and I presume
we immediately proceeded to—

Q. Why do you say "presume"?

A. Because you ask me to make a definite statement, and
I cannot swear to something I do not know definitely.

Q. You were there talking to those two men?

A. Yes, but how do I know that we "immediately" began
to discuss that question?

Q. That is all you went there for?

A. Absolutely.

Q. Did you discuss any other matter?

A. I don't know.

Q. You seem to testify in a hostile spirit.

A. Not a bit in the world, sir, I am here to tell you abso-
lutely anything in the world that I know. In the first place
I would like to know what suit this is I am testifying in.

Q. You don't know anything about it! I don't have to
answer because I am not a witness.

A. I understand that.

Q. And you will learn what is proper for you to learn.
Your province now is to answer questions. Do you under-
stand that?

A. Yes, sir.

Q. Do you understand that you are here under the process
of the United States Court to answer questions?

A. That is what I understand.

249 Q. Do you propose to do that?

A. Yes, sir, absolutely.

Q. Then I will inform you in proper terms what is neces-
sary for you to know to conduct this examination.

A. All right, sir.

Q. Do you have to indulge in any process of reasoning
and say "We probably did this" and "We probably did that"
when I ask you a direct question in reference to any of these
matters?

A. I would prefer to if I do not remember the matter well
enough to make a definite reply.

Q. Do you remember going to the room and meeting these
two men?

A. I do.

Q. Do you remember that at once you began to talk about the Podlesak matter and the purchase of the patents from them by the Sumter Electrical Company of Sumter, South Carolina?

A. We discussed that matter; yes, sir.

Q. There was no "probably" about it?

A. None whatever.

Q. Then why, a few moments ago, did you say "probably"?

A. Because you asked me if we had immediately discussed this matter.

Q. Which is the same question that is asked you again.

Mr. Wright: Please read it.

(The question referred to was read by the Commissioner)

Mr. Wright: The word "at once" was put in the second question, and it was "immediately" in the prior question.

250 A. Well, I did not intend to reply that we at once began to discuss that question, because I don't know that.

Q. Then the only reason that you said "probably" the first time was because there was the words "at once" in there or "immediately"?

A. That is it exactly.

Q. Then you mean to say that when you went to that room and talked with those two men, you went there to talk and did talk about the purchase by the Sumter Electrical Company of South Carolina of those patents owned by the Podlesak brothers?

A. Yes, sir; we did.

Q. Do you know that it has taken me five pages getting you to say that?

A. Well—

Q. Do you know that?

A. Well, you didn't put the word "immediately" in this last.

Q. Well, you are sparring with me?

A. Not a bit.

Q. Whether it should be a little word here or there or the other place. Is that the point?

A. Not at all, sir. I am just here to tell you the facts as I know them.

Q. Yes. Well, now, let's get down to the examination and

have it, and don't let us take up pages with reference to what you might call a verbal sparring. Did you hear me say that?

A. Yes, sir.

Q. Now, a few moments ago you said there was some
251 correspondence that brought these gentlemen to Chicago
to a room in a hotel where you went to meet them. Did
you not so state?

A. Yes, sir.

Q. Do you know anything about that correspondence?

A. There was such correspondence.

Q. Who wrote the letters to the Sumter Electric Company
at Sumter, South Carolina, with reference to this matter, did
you?

A. Yes, sir.

Q. Did Henry Podlesak?

A. No, sir.

Q. Do you keep a file of those letters?

A. Yes, sir.

Q. Where are they?

A. I presume they are at my office.

Q. Do you know whether they are there or not—That lit-
tle word "presume" now comes in again.

A. Well, now, sir, I have not seen those letters since that
time, and I don't know whether they are there. They ought
to be there.

Q. That is the proper place for them?

A. Yes, sir.

Q. I would like to have you produce those letters at the
hearing this afternoon. Will you do so?

A. If I can locate them; yes, sir.

Q. Will you do so without the further process of this
Court?

A. I would like to ask my attorney about that.

Mr. Secord: Yes, sir.

A. Yes, sir.

Q. Who is your attorney?

A. Mr. Secord.

252 Q. Is he your personal attorney?

A. Yes, sir.

Q. You conceive that it is a prudent thing for you, as a
witness appearing in response to a process of the Federal
Court, to have your personal attorney here present to advise
you as to whether you shall or shall not do a certain thing?

A. I thought it was best to do that; yes, sir.

Q. Why?

A. Because I did not know what I was a witness for. I wanted to have my attorney here to advise me if there were any questions that I didn't understand how to answer.

Q. You think I am not competent to make you understand the questions, and you brought somebody here to prompt you and advise you?

A. I don't know that you enter into it at all.

Q. Anybody that was cross examining a witness and cannot make the witness understand, you think that the witness should have some attorney sitting by to advise him?

A. I preferred to in this case.

Q. You think that is the proper way to answer questions in a case where you are subpoenaed as a witness, do you?

A. I prefer to have my attorney, yes.

Q. From the fact that you prefer, you think that is the proper way? Why do you spar with me? Do you or do you not think it is proper as a witness to have your attorney present to advise you?

A. I think it is proper.

253 Q. Why didn't you say so? Why didn't you say so before?

A. Well, I thought I said so.

Q. Well, you didn't say so. I want to have my answer now.

(Question and answer read by the Commissioner.)

Q. Do you see any difference in your answer as the question was first put and as read to you, and the answer that you make now to the question last put by me?

A. Will you read that again, sir. I didn't get the question.

Q. (Read by the Commissioner) Don't you see any difference?

A. No.

Q. I will tell you the difference: You preferred to do it when you answered it the first time, and now you say that it is proper; and the difference between the answers is whether you prefer to answer these questions and whether you prefer to do a certain thing with reference to the answering of these questions. Now do you see it?

A. It all seems about the same thing to me.

Q. Are you going to answer these questions the way you prefer, or the right way?

A. I will try to answer them the right way. That is the way I prefer.

Q. Very good. Then that is the same thing. When you prefer to answer a question then you are going to answer it the right way.

A. I want to answer them the right way.

254 Q. Well, stop "wanting" to do it, and do it. There seems to be some hostility between your company and the Webster Electric Company as expressed by your act now. What is that hostility?

A. There is no hostility that I know of at all, sir. I certainly have none toward the Webster Electric Company.

Q. When you three gentlemen came together in this room in the Great Northern Hotel, as you have told, and began talking about Podlesak, what was said?

A. In answer to that question, in which you ask me what was said, I can only tell you in a general way what I remember as having been stated.

Q. That is all I want. Tell me everything that you remember that was said there specifically or in a general way and in your own way.

A. Well, I explained to Mr. VanDeventer and Mr. Clement that the Podlesak brothers, who owned the patents covering the equipment as manufactured by the Webster Electrical Company, were going into the manufacture of these same equipments, the same type of ignition apparatus, and that I did not see the wisdom of allowing another competitor to open up in that field; and as I understood, Mr. Podlesak or the Podlesak brothers had good patents and a license agreement with the Webster Company, which was doing a large business in those devices, that I thought the Podlesak brothers would be willing to dispose of the patents and their connection with the patents, as regards their licenses or con-

255 tracts with the Webster Company; and that in view of the business that the Webster Electric Company was doing and the royalties accruing under those patents, that would be a good investment for our company, as it would accomplish two things: First of all, it would eliminate the competition which was about to develop as a result of the Podlesak brothers going into that business; and the royalties accruing under the license that the Webster people were operating under would result in a good investment—I mean a good return on the investment for the purchase of those patents. Then the matter was taken up by Mr. Clement, and on his

recommendation that the patents were good and that the license agreements were good, the Sumter Company of South Carolina and the Splittdorf Electrical Company of New Jersey bought those patents and acquired title thereto, as I understand it, and the Webster contracts and so forth.

Q. When was that?

A. That was at the time that I met Mr. VanDeventer and Mr. Clement at the Great Northern Hotel.

Q. When?

A. I think it was in August of 1915.

Q. Were Henry Podlesak and his brother Emil Podlesak present at this talk?

A. Yes, sir.

Q. Did they come in after you got there, or were they there when you got there?

A. I don't remember that. I think they came afterward.

Q. Then you must have talked with those two gentlemen prior to the time that they got there?

A. To Mr. Henry Podlesak.

Q. Didn't you talk prior to the time that Mr. Emil Podlesak got there?

A. No, sir; I never had any discussion with Mr. Emil Podlesak on the subject.

Q. On this occasion then he was not there?

A. Yes, sir; on this occasion he was there, which was the first time that I remember ever having conferred, or that Mr. Emil Podlesak was personally into the transaction at all, at that meeting at the Great Northern Hotel.

Q. And he was there then?

A. He was there then, yes.

Q. I will go back and ask you: Did you have any talk with those two gentlemen before the two Podlesak brothers arrived?

A. Oh, when you said "two gentlemen" a minute ago, I thought you were referring to the two Podlesak brothers.

Q. All right. Now modify your statement if you understand it.

A. Will you please read it again?

Q. (Read by the Commissioner)

A. You mean now the Podlesaks?

Q. I will ask you the question again.

A. Yes, sir.

Q. Did you ever talk with Mr. VanDeventer and Mr. Clem-

ent in the room in the Great Northern Hotel in August, 1915, prior to the arrival in the room of the Podlesak brothers?

A. Yes, sir.

Q. Now, you have just narrated a moment ago as to what took place. Is that what took place before the Podlesak brothers arrived?

A. Yes, sir.

257 Mr. Wright: I wish you would read that all over to him again and see whether he wants to supplement it in any respect.

Q. Refresh your memory so far as possible and see if there is anything more that took place before the Podlesak brothers arrived.

A. I don't want to add anything.

(The question was read by the Commissioner.)

Q. Do you want to supplement that in any way?

A. No, sir.

Q. That was substantially what took place with reference to the purchase of the Podlesak patents prior to the time that the two Podlesaks arrived and took part in this meeting?

A. Well, I stated there that Mr. Clement had advised something with reference to the patents and contracts and so forth. As a matter of fact, he took the matter under advisement or consideration, and about all that was done at that conference at the Great Northern at that time was to consider a definite proposition from the Podlesak brothers, which I think was handled in the nature of an option, and the option was finally exercised.

Q. Then that option was prepared by Mr. Clement after the arrival of the Podlesaks, and it was put into definite form of an option—is that true?

A. Exactly, yes, sir.

Q. So that it was obligating on the Podlesaks and could be exercised thereafter and ripen into a purchase if the
258 Sumter Electrical Company of South Carolina desired to do so?

A. Yes, sir.

Q. Well, it was taken in your own name, however?

A. Yes, sir.

Q. And for whom did you take it?

A. I took it for—it was taken in my name and for the Sumter Electrical Company and the Splitdorf Electric; that is to say, I don't know why it was taken in my name. The option was drawn in my name because I personally had had

the several interviews with Mr. Henry Podlesak regarding the matter, and as none of us had any authority, I presume, to handle the matter with the Podlesaks it was just put in such shape that it could be acted upon after being considered by the Splitdorf and the Sumter Company of South Carolina.

Q. You put into your answer "I presume". Is this a process of reasoning in your mind, or is it your knowledge or information?

A. Well, that was the way it was; yes, sir.

Q. Then will you withdraw the words "I presume" from your answer?

A. Yes, sir.

Q. And it was a fact that you were to take the option and assign the right to the Splitdorf people and the Sumter people?

A. Yes, sir.

259 Q. If they chose to exercise it?

A. Yes, sir.

Q. And that was discussed between the counsel of the Sumter Electrical Company, Mr. Clement,—

A. Yes, sir.

Q. (Continuing)—and yourself?

A. Yes, sir.

Q. And Mr. VanDeventer, an officer of your company—I think you said he was an employee of that company?

A. Yes, sir.

Q. And familiar with its requirements?

A. Yes, sir.

Q. And so advised that that option be taken?

A. Yes, sir.

Q. And you thought it was a good thing?

A. Yes, sir.

Q. Now, how long before that had you first begun to talk with Henry Podlesak with reference to this option or purchase, if it might ripen into a purchase, how long before this meeting had you begun talking with Henry Podlesak about such a deal?

A. I would say a month or so.

Q. Now, he put into your hands his contracts with the Webster Company during the conversations that you had with him a month prior to this meeting?

A. I never saw those contracts until the meeting at the Great Northern Hotel.

Q. Who had them then?

A. Mr. Podlesak.

Q. Now, you said that prior to the arrival of the Podlesaks you talked with Mr. Clement, and upon your statement, as you have told it, he thought that they should be 260 bought, these patents or whatever rights the Podlesak brothers had, that they should be bought.

A. I think I modified that to say that there was nothing definitely decided until the conference after the Podlesak brothers came into the conference.

Q. Well, whatever there was there, why, Mr. Clement and Mr. VanDeventer and you were after, but you didn't know what it was until the Podlesaks came in with the documents—is that the idea?

A. I didn't know anything more than what I understood to be its condition; that the Podlesak brothers owned patents, and under those patents the Webster Company was licensed to manufacture certain ignition devices, and under these patents that the Podlesak brothers were also going to manufacture ignition devices.

Q. The same things that the Webster Electric was going to manufacture—had been manufacturing?

A. So far as I know; yes, sir; that they were going into the manufacture of magnetos for stationary gas engines, which would set up another competitor for my organization.

Q. That they were going to manufacture these magnetos under the Podlesak patents?

A. Yes, sir.

Q. Wasn't that astonishing news to you that they had the right of manufacture under these patents? Hadn't you prior to that time supposed that the Webster Company had the right to do it?

261 A. No, sir; I was told by Mr. Podlesak that they had a right to manufacture these devices as well as the Webster Company; there was some agreement to that effect, or that the contracts that the Webster Company had so provided, that the owners of the patents could manufacture these devices.

Q. Well, when you found that out from Henry Podlesak, then you thought it would be a good opportunity to go into that line yourself and manufacture the same goods the Webster people were manufacturing?

A. We were already in that line; we were manufacturing a different line of oscillating equipment.

Q. Yes, but you wanted to go in that particular line that the Webster people were putting on the market.

A. No, sir; we were already manufacturing what we call a plug oscillator.

Q. Very good, but you certainly wanted what Henry Podlesak had to give you or sell to you, didn't you?

A. Yes, we wanted the Podlesaks out of the field as manufacturers, and so got a contract out of them that they would stay out of the ignition business.

Q. See if I put this fairly to you:—I want to do so—You really were not after any right to manufacture anything that the Webster people were manufacturing then?

A. No, we were manufacturing our own plug oscillator.

262 Q. Yes.

A. And the Podlesaks were about to manufacture, as I understood it, the same equipment that the Webster Company were manufacturing.

Q. And so then you thought if you could get that right to manufacture it would put the Podlesaks out of business?

A. Absolutely.

Q. And it would also give you the opportunity to manufacture the same goods that the Webster people were manufacturing?

A. Yes, sir; if we wanted to we could manufacture the same thing, with the exception of a certain type of magneto known as—the tri-polar, is it?

Q. Well, you are testifying. Please state.

A. Tri-polar, as well as I remember.

Q. You didn't want to manufacture that?

A. No, sir; we didn't want to manufacture that.

Q. And then your entire negotiations with the Podlesaks were to give you the right to go into the business of manufacturing the same machines that the Websters were manufacturing, with the exception of the tri-polar?

A. No.

Q. Well, state it please.

A. Well, I thought I had made that clear, that we were manufacturing what we called a Van Deventer plug oscillator, which accomplishes the same result as the Webster oscillator.

Q. Well, which you think does accomplish the same,
263 that is your trade theory.

A. That is my idea of it; yes, sir.

Q. Yes. Very good. You were doing that?

A. We were doing that; yes, sir.

Q. And you heard from Mr. Henry Podlesak that he was going into the line of manufacturing magnetos which would come into competition with yours?

A. Yes, sir.

Q. And that they would come into competition with the Websters, too?

A. Yes, sir.

Q. And you thought it a very good plan to put him out of business if you could buy him out?

A. Yes, sir.

Q. At a reasonable price?

A. Yes, sir.

Q. And manufacture all the stuff under this line covered by the Podlesak patents that the Websters were, if you wanted to except the tri-polar?

A. Except the business that they were handling and which we were pretty busy anyway, and considering that the Webster people were well established in that line and would be paying a royalty on all the business we did not handle, that with the VanDeventer patents and Podlesak patents we would control the field and there would be only the Webster Electric Company and the Sumter and Splitdorf Companies in the field to supply that class of equipment.

Q. Then you wanted to enter the same field that the Websters were occupying so far as the Podlesak patents gave you the right, if you wanted to exercise it?

264 A. I understood that with those patents we would be in a position to manufacture either the identically same machine as the Webster Company were making, with the exception of the tri-polar magneto, and with the VanDeventer machines we would control the field.

Q. Was this discussed with those two gentlemen, the expert and the lawyer, as to just exactly what you were after?

A. Well, I don't remember. I don't think it was in detail; but I must have stated, of course, that the Podlesak brothers—I had it on good authority—that they were going into the manufacture of these devices.

Q. You say you must of course. Do you remember that you did so state it in that meeting to these gentlemen, the expert and the lawyer? I don't want you to reason out or give your reasons. I want you to answer from recollection.

A. Yes, I will be very glad to answer if you will state your question.

Q. (Read by the Commissioner)

A. I don't remember that we went into those details at all. That was a matter entirely up to Mr. VanDeventer and Mr. Clement.

Q. Now, I will go back to this book that I spoke of, which was written by Mr. VanDeventer, and which bears the legend, "The Ignition Handbook" containing forty illustrations—price 50 cents; a common sense treatise describing electrical ignition systems for internal combustion engines; a description of modern ignition equipment for high and low tension systems and methods of installing and operating the same. Did you ever see that before?

A. Yes, sir; I have seen such a book.

Q. Have you studied it?

A. I don't think that I ever read it through, but I know pretty well what is in it.

Q. Mr. VanDeventer was considered an authority on ignition devices and ignition systems, wasn't he?

A. I consider him an authority on them.

Q. Evidently your company considered him one because they had employed him as an electrical engineer?

A. No, we didn't. We had employed him—he came into the organization as telephone switchboard workman.

Q. There isn't anything about telephones or switchboards in this book, is there?

A. No, sir.

Q. Look that over.

A. No.

Q. You are familiar with it?

A. Yes.

Q. It is altogether about ignition devices?

A. Yes, sir; but you see when Mr. VanDeventer came to the Sumter Electrical Company we were building telephone devices.

Q. Don't get your mind off on telephones. I am asking you how this man loomed up as an engineer in your employ on ignition devices. Wasn't he so employed?

A. He was employed as I have stated. He just came into the organization as a telephone man to work on switch-
266 boards, which brought him into contact with the preparation of our catalogues and work in the laboratories,

and he was a salesman and finally he got into the patent field until he became a patent attorney.

Q. And he was a patent attorney, was he?

A. He is now.

Q. And a patent expert?

A. Well, I don't know you would call him a patent expert, but he is now a practising patent attorney.

Q. When he came up there to see you he knew pretty well what the Sumter Electrical Company and the Splittorf Company wanted in their business, didn't he?

A. Oh, I think he did.

Q. And you sent for him for that reason, to confer with the attorney of that company, Mr. Clement—is that true?

A. I corresponded with him and he came up here.

Q. And he is the man you selected to come up here to talk about it?

A. Well, I would rather have him than anybody I knew in the company to advise me on matters of that kind.

Q. Do you know the difference between a rotary and an oscillating magneto?

A. Yes, sir.

Q. Perfectly familiar?

A. Absolutely.

Q. You make that a department of your business as well as Mr. VanDeventer does?

A. I am afraid I do not.

Q. Well, you know the practical end of it and how it applies in the market, and the demand?

A. Yes, sir.

267 Q. You know the forms of ignition?

A. I don't know just what you mean.

Q. Well, suppose I should take you into hand and instruct you a little. You don't seem to understand very much about electrical devices yourself. I should assume that you would understand more than I, wouldn't you—

A. You asked me something about the forms of ignition. I don't know what you mean.

Q. You don't know what I mean at all when I ask you that?

A. No, sir.

Q. How much salary do you get as president of the Sumter Electrical Company of Illinois?

A. \$7500 a year.

Q. They must think you know something?

A. Well, I hope I am earning my money.

Q. If I should tell you that generally speaking there are forms of ignition or a low tension and a high tension current, would that come within your experience and would you say that is true?

A. Yes, sir.

Q. You would know that without being an expert?

A. Yes, sir.

Q. You would know that the low tension current usually is operated by a mechanical make-and-break of the ignition points, and that it is usually used for stationary and slow moving engines—isn't that true?

268 A. It is used for stationary engines; yes, sir.

Q. Well, slow moving engines, slow speed engines?

A. Yes.

Q. Anybody in your position would know that without being an expert, wouldn't they, in contact with business of your company?

A. Well, that is a very indefinite term.

Q. Well, you make that more definite if you want to.

A. Well, I didn't know what you meant by slow speed engines.

Q. Well, now, do you know that the low tension current is usually used and can be used to better advantage for engines, stationary engines of slow speed than a high tension current?

A. No, I don't think that is the case these days.

Q. Don't you know that at all?

A. No, sir.

Q. Well, the Sumter people of Sumter, South Carolina, make a low tension rotary, as you call it?

A. Yes, sir.

Q. And the Webster people make a low tension oscillator?

A. Yes, sir.

Q. And those low tension machines, whether oscillating or rotary, are used to better advantage on engines of slow speed, aren't they, than the high tension current magneto?

A. Well, the rotary magneto—

Q. Don't get off now. Answer that question.

A. Will you read the question?

Q. (Read by the Commissioner)

269 A. I may be very stupid, but I don't understand what you mean by that.

Mr. Wright: I will change the form of the question: In-

sert the word "engines of slow speed using make-and-break igniters".

(Whereupon the question as amended was read by the Commissioner as follows:

"Q. And those low tension machines, whether oscillating or rotary, are used to a better advantage on engines of slow speed using make-and-break igniters, aren't they, than the high tension current magneto"?

A. Yes, sir.

Q. Now, that particular field is covered by the Webster oscillator—Webster low tension oscillator, and it is the only field that is covered by the low tension oscillator, isn't it?

A. I don't get you there. I don't understand the question.

Mr. Wright: Strike that out then.

Q. That type of engine were the only engines using the Webster low tension oscillator at that time?

A. Yes, sir; so far as I know.

Q. And that particular field, which was thus occupied by the Webster with its low tension oscillator, the Sumter undertook to enter with a low tension rotary—is that true?

A. We were already in that field.

Q. Now, referring to the high tension current, that 270 is a so-called jump spark device.

A. Yes, sir.

Q. And that is used for automobiles and swift moving engines, the high tension current jump spark device, isn't it?

A. It is used for automobiles and engines of any speed.

Q. Usually swift running speed?

A. Not necessarily.

Q. Well, now, you were developing the field of the high tension jump spark at the time that this question of buying from the Podlesaks their rights came up, weren't you?

A. No, sir; we were not in the high tension field.

Q. You are not until about that time?

A. Well, I don't recall whether we were manufacturing any high tension magnetos at that time—let's see, that was August, 1915—oh, I would say at that time we were manufacturing both types, low tension and high tension.

Q. The high tension field which you developed at that time, rather, came into the Splitdorf field which it occupied—is that so?

A. Yes, sir.

Q. And therefore it became of advantage to the Splitdorf Company to make some terms with the Sumter Company?

A. Yes, sir.

Q. And they did so?

A. Yes, sir.

Q. And that carried along with it, if a purchase of the Sumter Company was made by the Splitdorf Company, that carried along with it the low tension rotary machine which you were using in the field occupied by the Webster Company as I have previously stated?

A. Yes, sir; and also the plug oscillators that we were manufacturing.

Q. How many of the plug oscillators were you making at the time that this matter came up for a purchase of the Podlesak rights?

A. Very few; about, I should say, during that year possibly twenty-five hundred.

Q. To how many customers were you supplying these twenty-five hundred machines?

A. One customer.

Q. And who was that one customer?

A. Fairbanks Morse & Company.

Q. And you tried to secure other customers to introduce upon their product the plug oscillator which the Sumter Company manufactured?

A. We did when we first brought it out; and then later took only the Fairbanks Morse account until we had—in fact, that is the only account until recently that we handled. That was so large, the volume there was so large, that we did not go extensively in the plug oscillator field.

Q. After you got the Podlesak patents, then you have branched out and got other customers?

A. No, that is when we stopped going to the other customers. Before we acquired the Podlesak patents we had endeavored to sell some plug oscillators to several customers, but after we acquired the Podlesak patents we did not
272 assume to do any business with any of the other companies except the Fairbanks Morse Company, whom we were handling as to all of their ignition accounts.

Q. You had not succeeded in interesting any of the other customers with your plug oscillator; you had tried to, but you ceased to endeavor to, and confined yourselves entirely to this one customer?

A. At that time we discontinued it; yes, sir; and confined ourselves—

Q. You did try to sell, but you did not succeed in selling—

A. Previous to that time that we acquired the Podlesak patents.

Q. Now, what is the capitalization of your company—what was the capitalization of the Sumter Electrical Company of South Carolina at that time?

A. \$500,000.

Q. And what was generally its output—how many machines did it put out, of all types, per annum?

A. In 1915 I presume it was about 50,000 machines.

Q. Well, you could have very easily handled more than 2500 of the type of machine you were selling to the Fairbanks Morse Company if the demand had been made upon you to do it?

A. No, we could not very well do it because that job was not being made at the Sumter factory.

Q. Where was it?

A. It was built in Chicago.

273 Q. Where?

A. In different shops around town.

Q. At whose direction?

A. The Splittorf Company and Sumter Company.

Q. The Sumter Company of South Carolina?

A. Yes, sir.

Q. Were they being made by the Sumter Electrical Company of Illinois?

A. No, sir.

Q. So then these 2500 machines did not come from Charleston at all?

A. No, sir.

Q. I should say from Sumter, South Carolina?

A. No, sir.

Q. The works down there was extensive?

A. Yes, sir.

Q. Covering some considerable acreage?

A. Yes.

Q. And it was quite possible to have increased the output if you could have obtained the orders for that particular line of goods, was it not?

A. Well, it was not convenient for them to manufacture that job there at that time.

Q. And then furthermore you did not get the orders; that is true, too, isn't it, for more than the 2500?

A. The only orders we took was that of the Fairbanks Morse Company.

Q. Well, you could not get them anywhere else—you tried to?

A. No.

Q. You solicited them?

A. No, after the time that we originally brought out the original VanDeventer machine, some three or four years
274 ago, we discontinued the matter until—I mean, and then acquired these other patents—

Q. What other patents, the Podlesak patents?

A. The Podlesak patents; yes, sir.

Q. Now answer my question. You solicited further sales to various parties of the plug oscillator prior to the time of your acquiring the Podlesak patents, didn't you?

A. Yes, sir.

Q. And you could not get the orders, could you?

A. Yes, sir; we got some orders.

Q. Whom did you get them from?

A. We got one order from the Stover Engine Works—

Q. Who were they?

A. —Engine Works of Freeport.

Q. How many were ordered from them?

A. I don't remember.

Q. Who else?

A. That is the only order I think we ever secured.

Q. Isn't it a fact that that equipment which you supplied to the Stover Company was unsuccessfully tried out, and that the Stover Company then bought their equipment from the Webster Electric Company?

A. They did not buy any more from the Sumter Company.

Q. And they did buy from the Webster Company?

A. Well, I suppose so, I don't know.

Q. Don't you know that the Webster Company had the Stover business, retained it from that day to this, and that you have tried to get it away from the Webster Company?

275 A. I don't remember that we ever tried to do any business with the Stover Company except at that time when we originally submitted those early models there.

Q. You said a moment ago that you were increasing your sales of the plug oscillator since the time when you supplied

it only to Fairbanks Morse, the 2500 machines. To whom are you selling now in addition to the Fairbanks Morse?

A. The Worthington Steam Pump Company at Cudahy.

Q. Anybody else?

A. We sold them 3500—

Q. Anybody else?

A. Haven't sold anybody else.

Q. Do you attribute the fact that you got that order of 3500 to the fact that you were manufacturing the unitary plug and bracket under the rights which you obtained from the Podlesak brothers?

A. No, sir.

Q. Which you alleged you obtained?

A. No, sir; that is the VanDeventer machine we furnished them.

Q. So that the Podlesak patents were in no way included in the device in connection with your so-called VanDeventer patent—

A. No, sir.

Mr. Wright: Read that to me.

(The question and answer were read by the Commissioner.)

Q. (Continuing)—which you sold to these people 3500 of?

A. 3500 machines.

276 Q. 3500 machines—

A. Yes, sir.

Q. That is as you understand it?

A. Yes, sir.

Q. Now at the time that this conversation took place between you and Henry, which led up to this meeting at which the option was obtained, had not the Webster Company sued the Sumter Electrical Company of South Carolina in the Federal Court in South Carolina for an infringement of the Podlesak patents?

A. Yes, sir.

Q. In that suit was there an allegation as to what that particular infringement was?

A. I don't know.

Q. Did any allegation of infringement, so far as you know, appertain to the machines which the Sumter Company were supplying to Fairbanks Morse & Company?

A. Was there an infringement?

Mr. Wright: Read the question.

Q. (Read by the Commissioner)

A. I don't know.

Q. Well, what was the infringement alleged?

A. I don't know. I don't think I ever read the bill of complaint.

Q. Whatever it was it was pending as a claim of the Webster Electric Company for an infringement against the Sumter Electrical Company of South Carolina at the time that you met Henry Podlesak and learned from him what you have told us?

A. That I knew of this suit in South Carolina, but as to the details I am not familiar.

277 Q. You knew it was pending?

A. I knew the suit was pending.

Q. The Podlesaks were plaintiffs in that case, joint plaintiffs with the Webster Company—that is the two Podlesak brothers?

A. I think they were. I am not positive.

Q. And it was about to come to trial down there in the Federal Court in South Carolina—is that true?

A. I couldn't tell you that. I was in Chicago at the time.

Q. Now, anyway there was a claim for infringement of the Podlesak patents brought by the Webster people, the Webster Company and the Podlesaks, against the Sumter of South Carolina, pending in the South Carolina court—is that true?

A. I knew there was a law suit, and I understood an alleged infringement, but—

Q. By the parties that I told you against your company, as I have stated them?

A. I understand that is true.

Q. As to what particular device was the infringement claimed?

A. I don't know.

Q. Was it customary for you to go down to the works often when you were living in Chicago, as their representative?

A. I go down about twice a year.

Q. And during that time you would see Mr. VanDeventer?

A. Yes, sir.

Q. And the various officers of the company?

A. Yes, sir.

Q. And whatever there was of interest with reference to the various patent matters, or of importance with refer-

278 ence to various patent matters, you discussed with them?

A. I never had much to do with the patents. I have handled the sales business and the organization for years and years, but when it comes to patents I don't know anything

about the patents, and those are matters that are attended to entirely by other members of the organization whose business that is.

Q. But you understand the practical end of it, and you would know whether you want to make a certain machine or not. That is the point.

A. Yes, sir.

Q. And sometimes some lawyer comes to you and tells you that there is another fellow that claims you cannot?

A. Yes, sir.

Q. I suppose you know that business end of it?

A. Yes.

Q. And you would very likely under those circumstances discuss with him why you cannot, would you not?

A. Yes, sir.

Q. And if there is any litigation pending over any of your product you know what it is?

A. Yes, sir.

Q. That is your business?

A. Yes, sir.

Q. That is your job?

A. That is right.

Q. And you went down there from Chicago to South Carolina on company business?

A. Yes, sir.

Q. And everything that was of importance for you to know—

A. Yes, sir.

Q. —you discussed with them?

A. Yes, sir.

279 Q. And you knew about this litigation?

A. Exactly so, and in connection with that matter I was always told that the Van Deventer device was in no sense covered by any of the Podlesak patents.

Q. Didn't Van Deventer put in a patent application?

A. A number of them.

Q. So that this plug oscillator was something which you advertised to the trade had been struck upon or invented by your engineers?

A. Yes, sir.

Q. And you were putting out this plug oscillator as something that your engineers had devised?

A. Exactly so; yes, sir.

Q. And afterwards Podlesak, Emil Podlesak, put in an ap-

plication for a device covering the plug oscillator in the same field which Mr. VanDeventer had applications in?

A. I understand he did; yes, sir.

Q. So then there was an application in by Emil with reference to the removable magneto from the unitary plug and bracket?

A. I don't know what that application was. I never read it in my life.

Q. Did you know that long before Mr. VanDeventer had applied in the Patent Office for the plug oscillator, or before the Sumter Electrical Company were making them, that that particular feature had been put out by the Webster Electrical Company, the unitary plug and bracket that we are talking about?

280 A. I was very familiar with the Webster Company magneto, but did not understand that any patents on that machine covered any of the devices that were being promoted by the Sumter Company known as the VanDeventer plug oscillator; in fact, I always understood it was absolutely different.

Q. That is, that your plug oscillator was entirely different from the unitary plug and bracket of the Webster Company?

A. Absolutely.

Q. That is what you claim?

A. Yes, sir; I have been advised of that consistently and insistently by our attorneys ever since we have been in that business.

Q. Wasn't that the plug oscillator—wasn't that plug oscillator a unit of construction with the bracket—

A. Yes, sir.

Q. ~~That~~ that you fellows put out?

A. Yes, sir.

Q. And there was a dispute about that with the Webster-people?

A. I don't know about that.

Q. Didn't you know that they claimed that feature?

A. After we brought this machine out—

Q. Yes.

A. (Continuing) —they sued the Sumter Company for an infringement of some sort. I knew they claimed it then.

Q. Before that weren't the Webster people suing the Hercules Electrical Company of Indianapolis?

A. So far as I know, they were, yes.

Q. With reference to that same feature?

A. Yes, sir.

281 Q. Then you did know, Mr. Manning, that this question of unitary plug and bracket was in litigation between the Webster people, yourself and the Hercules people?

A. Absolutely.

Q. And prior to the time when you acquired these rights under the Podlesak patents?

A. Yes, sir; I knew of that litigation.

Q. You knew of that litigation?

A. Yes.

Q. And it was your business to know it?

A. Sure—but I was informed that there was no infringement whatever.

Q. I don't doubt that, that your attorneys informed you that there was no infringement by your company.

A. Exactly.

Q. But you did know that this was in litigation with the Webster people?

A. Absolutely; yes, sir.

Q. You stated, Mr. Manning, that there was a litigation between the Webster people and the Hercules, in which the former claimed an infringement against the latter. Did you in that litigation co-operate or in any way assist the Hercules people to defend against this claim if infringement, as I have stated?

A. No, sir; I did not.

Q. Didn't you ever in any way come in contact with any person whatsoever representing the Hercules people, and for the purpose of and with the intent of joining with them in such a defense?

282 A. I don't recall that I did, sir.

Q. Didn't the Hercules attorney come to see you?

A. Well, I remember meeting a Mr. Ayer or somebody. I don't remember that is his name.

Q. Sly?

A. Sly, yes, Mr. Sly.

Q. Go on and tell us what took place between you and Mr. Sly.

A. I don't remember any details of the conversation at all.

Q. Was he representing or claiming to represent in this interview with you the Hercules people?

A. I knew that he was representing the Hercules people, but I don't remember—

Q. You knew it independently of his statement to you on the occasion when you met him, or did so depend upon his statement that he was representing them?

A. I think I knew it.

Q. And did you talk with him about this litigation which had been brought by the Webster people against his company?

A. I don't remember that I discussed the matter with him at all, sir.

Q. Later did you as a matter of fact proceed with your infringement upon any agreement or understanding of any kind, name, nature or description, with the Hercules people, that you and the Hercules people should continue with the infringement against the Webster people?

A. I certainly did not.

Q. I will put this in a modified or a little different 283 form: Did Mr. Sly come to you to get any information from you for the purpose of aiding him in the defense of the suit brought against his company or the company that he represented by the Webster Electric Company?

A. I don't remember the nature of his visit at all.

Q. Didn't Mr. Sly go to Sumter, South Carolina to confer with other officers of your company?

A. I think he did.

Q. And didn't you meet him down there?

A. No, sir; I never did.

Q. You knew he was down there?

A. I heard it because I remember that he has been there, but—

Q. Did you know the nature of his business down to Sumter?

A. I didn't know anything about that; no, sir.

Q. Did you know that as a result of his visit your company indulged in further infringements, as the Webster people claimed, against their patents?

A. I do not.

Q. Well, his visit—I will change that: As a result of his visit, and your answer is what?

A. I said I do not.

(Whereupon the amended question was read by the Commissioner as follows:)

“Q. As a result of his visit your company indulged in

further infringements, as the Webster people claimed, against their patents?"

A. I don't know what was done. I don't think Mr. 284 Sly's visit had anything to do with our business in any way whatever.

Q. You testified that when you were building these plug brackets for Fairbanks Morse & Company that you did not know that there was any claim for an infringement thereby made by the Webster Company against your company.

A. I knew of this lawsuit that you spoke of in South Carolina, but I had never paid much attention to the question of whether the apparatus was as alleged, as being an infringement or anything of the sort, as that was entirely up to our legal department, and it was a matter that I personally had no active interest in.

Q. Mr. Manning, you did know at the time that those brackets or that those magneto devices, as you call them, the plug oscillator—

A. Yes.

Q. —were supplied to the Fairbanks Morse Company, that there was a contention by the Webster Company that such manufacture was an infringement against their patents?

A. Well, I—

Q. Before you made them, you knew that there was a claim by the Webster Company that you were infringing?

A. I understood that the Webster Company had sued the Sumter Electrical Company of South Carolina.

Q. Before that—before you made the 2500?

A. I could not tell you, sir, whether it was before or after.

Q. Didn't you know that before you made those 285 brackets for the Fairbanks Morse people that the Webster people had in fact sued the Hercules people for infringement of the unitary construction?

A. Possibly so. We were manufacturing those things, no doubt, at the time that this suit was filed in South Carolina, and continued to manufacture them, and we have been manufacturing them ever since.

Q. Yes, but don't get away from my question. You did know that there was an infringement suit pending by the Websters against the Hercules prior to the visit of Mr. Sly to Sumter, South Carolina?

A. Oh, pending against the Hercules; yes, sir.

Q. Yes.

A. Yes, sir.

Q. Prior to the time that you supplied the Fairbanks Morse Company with this oscillating device, as you have told, you had always fought the so-called oscillator and did not believe in it; stated that you did not believe in it—I mean, in a trade way?

A. Yes, sir; before we manufactured the oscillator, and even when we were manufacturing the oscillator, as shown in that little book.

Q. What do you mean by this little book?

A. That handbook there.

Q. The ignition hand-book that I have referred to?

A. Yes, sir—I have stated frequently that we considered the rotary the most durable machine, and I consider it so to-day.

Q. But when you wanted to get the trade of the Fairbanks Morse Company, after the attorney of the Hercules Company had gone down to see you, then you went into the field of supplying to the Fairbanks Morse Company the so-called oscillator which the Webster people claim was an infringement of their patents—is that so?

A. I don't remember that the Fairbanks Morse business had anything whatever to do with the Hercules suit, or that it was a result of anything else than that we were supplying them their ignition equipment, and they asked us to build for them a plug oscillator—I mean, an oscillating magneto of the combined plug and bracket type, which we did, the unitary construction.

Q. And that was after the visit of Mr. Sly, representing the Hercules Company, to your company in South Carolina?

A. I could not tell you to save my life. I don't know anything about those dates.

Q. Now, referring back again to this Fairbanks Morse matter, you say you supplied them with 2500—

A. I said about 2500.

Q. Is it true that they had started to equip their output with a unitary plug and bracket like that which was supplied by the Webster people?

A. I don't know.

287 Q. Didn't you manufacture for them these so-called oscillators with the unified plug and bracket in order to take away the business from the Webster people with whom at that time the Fairbanks Morse Company were doing business?

A. Positively no. I certainly did not accept their business to take it away from the Webster Company.

Q. You have a line of talk about the benefits of your particular devices, I suppose?

A. Yes, sir.

Q. And it was fair for you to get a customer if your machines on their merits could get the business; you were perfectly willing to do that?

A. Yes, sir.

Q. And whereas prior to the time that this particular matter came up between you and the Fairbanks Morse Company you had been very much opposed to the oscillating type, you were willing to supply something to the Fairbanks Morse Company along the oscillating line, if that is what they wanted?

A. Yes, sir.

Q. You did not have at that particular time your oscillating device, your plug oscillator?

A. Yes, sir; we had the plug oscillator at that time.

Q. And had manufactured it prior to that time?

A. We hadn't a regular production, but they saw the unitary structure of the VanDeventer type, liked it, and the job was duly developed in their own plant.

288 Q. And when you found that they had got their ideas along the idea of a unitary plug and bracket, you were perfectly willing to supply it to them if you could?

A. Oh, no. We submitted a VanDeventer plug oscillator which they were impressed with, the idea of the magneto being separate and distinctly disassociated from the bracket, but when they saw that they asked us to send our engineer up there and make up one of those brackets as suitable for their ten-horse engine, which we did.

Q. And you knew that the Webster people were equipping that same engine that the Fairbanks Morse was putting out with the unitary plug and bracket and oscillator, and you took that business away by supplying your devices and sending your engineer to apply your devices to their engines, that is, to the Fairbanks Morse engine?

A. Well, we got the business. I don't know just why you want to put it that way.

Q. Didn't you know that the Webster Company were furnishing their device when you got that business from the Fairbanks Morse Company?

A. Yes, I understood that the Webster people had furnished a hundred of those outfits—

Q. And then you furnished your outfit?

A. —which they liked better, and bought them from us.

Q. What was your outfit that you supplied to them?

A. The VanDeventer plug oscillator.

289 Q. What was the type or line of engines put out by the Fairbanks Morse Company, to which these 2500 plug oscillators were supplied by the Sumter Electrical Company —was it the Z-line?

A. The Z-line; and I notice you keep now referring to the 2500.

Q. About 2500?

A. Of course, we have supplied them probably six or seven thousand of those outfits.

Whereupon the hearing was adjourned to 2:00 o'clock in the afternoon of this day.

May 11, 1917, 2:00 o'clock P. M.

Parties met pursuant to adjournment before said Commissioner.

Present: Mr. Wright, Mr. Simmons and Mr. Secord, representing certain parties as before.

FREDERICK C. MANNING, having resumed the witness stand, was further interrogated by Mr. Wright, and testified as follows:

Q. Now, Mr. Manning, let us go on with this Fairbanks-Morse & Company matter. They were going to put on a new line of engines, you say?

A. Yes, sir.

290 Q. The Z-line?

A. Yes, sir.

Q. When was this?

A. It was the spring of 1915, as well as I remember.

Q. And it was before you had talked with Henry Podlesak at all about acquiring any rights under his patents?

A. I think it was.

Q. Now, they wanted an ignition system for that new line, didn't they?

A. Yes, sir.

Q. And they talked to you about it, or you went to them in order to get some of your appliances adopted by the company on this line—is that true?

A. Yes, sir; we were equipping the regular Fairbanks Morse line, and I think at that time they had brought out the—I am just trying to remember whether they had brought out the small sizes of the Z-line.

Q. Anyway you had not prior to that time supplied them with any of the Sumter Company ignition apparatus, had you?

A. Oh, yes; for years.

Q. But not these 2500 machines that we were talking about this morning?

A. No, not of the plug oscillators.

Q. Not of the plug oscillators?

A. No, sir.

Q. I will change that question so that it will read this way: Prior to the bringing out of that Z-line by the Fairbanks Morse Company, your company, the Sumter Electrical Company of South Carolina, had not supplied them with 291 any of your so-called plug oscillators?

A. No, sir.

Q. Now, I have in my hand a catalogue numbered 15, issued in 1915. Is that why you called it number 15?

A. No, sir; I think the one previous was Number 14.

Q. Well, it does not mean the year catalogue, but it means that this was the literature that you call catalogue Number 15?

A. Yes, sir.

Q. I will ask you whether that was the catalogue that listed the plug oscillators which you sold to the Fairbanks Morse Company for their Z-line, and which you call the plug oscillator? Examine that, please. (Handing said document to witness.)

A. I think it shows it in here. These are not plug oscillators.

Q. Well, turn to it then.

A. Here is the plug oscillator.

Q. On what page are they?

A. 37 to 44 inclusive.

Q. And the equipment which you supplied, being the 2500 machines that we are talking about, shown on page 38, was the oscillator shown on page 38, figure 1—is that true?

A. Yes, sir; that is the Fairbanks Morse & Company plug

oscillator; or, in other words, the one we supplied for the ten-horsepower Z-engine.

Mr. Wright: I will ask the Commissioner to please mark that catalogue numbered 15 for identification.

292 (The document referred to was marked as Defendants Exhibit 4, F. H. S.)

Mr. Wright: I offer that in evidence.

(Said document was offered in evidence by counsel for defendant, marked as Defendants Exhibit 4, and is returned herewith.)

Mr. Wright: I would like to have you also identify the page 37 and page 38, figure 1 on page 38.

(The pages referred to were marked for identification with the initials of the Commissioner, F. H. S.)

Q. Now, this particular VanDeventer plug oscillator shown in figure 1, and which you say was the type of the 2500 machines supplied to the Fairbanks Morse people for a portion of their new line Z, was equipped with a magneto which was really of rotary construction?

A. Yes, sir.

Q. But having applied to it two springs, so that, being a rotary constructed magneto, it was nevertheless given by such appliance of the springs an oscillating motion—is that true?

A. No, the springs are not applied to the magneto.

Q. How are they applied?

A. (Continuing) —as it goes with the Webster-Podlesak machine.

Q. How were they applied?

293 A. They were attached to the plug itself, and not the magneto.

Q. But being so attached, it gave the oscillating name to this movement?

A. Yes, sir; just the same as shown on page 15 of the bulletin, which shows several oscillating magnetos, all of which are of the rotary type except that in these cases the spring is mounted on the magneto making that an oscillating magneto.

Mr. Wright: Identify that page 15.

(Page 15 of the book referred to was marked with the initials of the Commissioner, F. H. S., for identification.)

Q. So that at that time the Sumter Electrical Company of South Carolina did not put upon the market anything in the

way of a magneto, anything other than a magneto of rotary construction—is that true?

A. No, sir; we were building and always have been building both types, rotary and oscillating, as is shown by that catalogue.

Q. But you are sparring with me now. You call it an oscillator. Now, I am asking you whether anywhere in any of your literature you put out an oscillating type of machine, other than that which was in its construction rotary.

A. Well, Mr. Attorney, I don't mean to be sparring with you at all. I want that to be distinctly understood.

Q. Then answer the question.

294 A. Well, the only way I can answer that question is to call your attention to those oscillators on page 15, which are essentially oscillating magnetos, and they have been manufactured ever since about the time we began to manufacture rotary magnetos.

Q. You and I are not here to discuss whether or not your product is a rotary or an oscillator. Get that out of your head now, will you? I will ask you this question: Is there any machine that the Sumter Company put on the market, being a magneto machine, which is other than of rotary construction except those which you have called our attention to and called them oscillating? Now, we are not sparring on a name. I want to have you answer that question.

A. Well, the answer to that would be simply, yes, sir; that a magneto is a rotary or oscillating magneto, depending upon whether the electrical energy is generated by rotating the wire, as in that case, or whether oscillating the wire as in that case. (Witness indicating.)

Q. And from the fact that those springs there oscillated it, you call that machine an oscillator?

A. Absolutely.

Q. Well, I tell you that I want to know whether such a machine, having that motion which you call an oscillator, is not a rotary constructed machine in other respects?

A. If you take the oscillating feature of it it is a rotary magneto; if you take the gear off it is an oscillating magneto.

295 There is absolutely no difference, so far as electrical generation is concerned, except that in one case the generating, moving member is rotated, and in the other case it is oscillated.

Q. Now, I understood you perfectly before you began that explanation.

A. Well, I am trying my best to give you the difference by telling you that the machines are one and the same.

Q. Now, again I am going to put it in one sentence, and say that I am not trying to differentiate in a name. I am trying to get at the facts. And what your literature shows are magnetos of rotary construction with, in some instances, oscillating devices—is that true—applied to them?

A. Well, you could just as easily say that they are oscillating machines used in some instances as rotary; it would be just exactly the same thing. If we started out to build an oscillating magneto that is what we would build, and yet the rotor and magno-electric and field structure would be suitable for either rotary or oscillating.

Q. So that you adopt your rotary machines, being of rotary construction, to oscillating machines, as a customer may require, by attaching these springs so as to get the oscillating motion. Is that what you mean?

A. No, we would furnish him an oscillator, which would be the machine with the additional features making it an oscillator. It is a separate and distinct machine.

296 Q. By machine you mean the rotary machine?

A. The same elements are used in the construction of the two machines.

Q. What two machines?

A. The same generating elements are used in the construction of a magneto operated rotary, or a magneto operated as an oscillator.

Q. And you take your rotary machines and turn them into oscillators by putting these springs on them?

A. Well, one here—

Q. Answer that question. Do you?

A. No, we build an oscillator and—

Q. You call it an oscillator?

A. These are oscillating magnetos shown on page 15.

Q. Wait a minute. You call it an oscillator after you put these springs on it?

A. It is an oscillator then.

Q. After it has become an oscillator, by putting the springs on as you tell, can you make it back again into a rotary?

A. Oh, yes.

Q. How?

A. By adding the parts that are necessary to be used as a rotary.

Q. By taking off the springs?

A. By taking off the springs; yes, sir.

Q. Then the only difference between your rotary machine and your so-called oscillating machine is the fact that there are springs on it, and the springs give the motion which you have been talking about, which is an oscillating motion.

297 A. Well, I must be very stupid. I don't seem to get just what you are trying to have me say.

Q. I am not trying to have you say anything. I am trying to have you answer that question the best you know how.

A. I have answered it by saying that a rotary magneto and an oscillating magneto are one and the same, so far as the electrical generating parts are concerned, but the motive power or the means of oscillating the wire through the magneto field may be either rotating or oscillating.

A. I understood you before, but I asked you a question now. Please answer it.

(Whereupon the pending question was read by the Commissioner.)

Mr. Wright: Answer that question, please. It is susceptible of an answer yes or no.

A. Yes, sir; that is the case so far as the—

Q. Wait a moment.

A. So far as the machines that are shown on page 16 are concerned. Now, with the plugoscillator there was no spring, as shown on page 16, mounted on the magneto.

Q. But those springs are mounted—

A. On the plug.

Q. On the plug?

A. Yes, sir.

Q. Exactly.

A. Yes, sir.

Q. And the magneto shaft connected with it?

A. And the magneto shaft is equipped with a crank which is used or applied in connection with the powl actuated
298 by the springs which are mounted on the bracket.

Q. It amounts to the same thing; it makes it a unitary construction?

A. Yes, but the springs are not on the magneto at all, as is the case with the Podlesak machine which the Webster Company used.

Q. Now, doesn't that construction which you have just testified to, and which you call "plugoscillator"—being one

name—doesn't that construction involve an infringement of the Podlesak patents?

A. I don't know.

Q. Do you know whether the Webster Company claim that it does?

A. I understand they do.

Q. And isn't that what they were suing you for down there in Charleston, South Carolina—the Sumter Company down in Charleston?

A. I really don't know what they were suing for. I didn't pay any attention to it. That matter was entirely up to the attorneys.

Q. I will modify that question so that you can answer it of your own knowledge: Doesn't that construction, which you have just explained, involve an infringement of the Podlesak patents?

A. Well, in my opinion, it does not; but I don't know—

Q. Doesn't that construction which you have described involve the unitary plug-bracket construction, which the 299 Podlesak patents cover, claimed by the Podlesak patents?

A. I am not competent to say what the Podlesak patents do cover; but the plugoscillator incorporates the shelf for the magneto with the plug.

Q. And it is a unitary plug and bracket?

A. Well, we call it a combined outfit because the magneto is mainly in juxtaposition to the plug, and the rotor of the magneto is separated from springs mounted on the plug of the bracket.

Q. And this construction—

A. I mean, on the plug—not of the bracket.

Q. And this construction involves a unitary plug and bracket—does it or does it not?

A. It does involve a unitary plug and bracket; yes, sir.

Q. Now, your line of talk was against the oscillating machine anyhow; that is to say, you were talking about a rotary all the time whenever you wanted to get anybody to buy a magneto, you were talking against the oscillator and talked for the rotary, didn't you?

A. Yes, sir; we considered it a better scheme than the outfit—I mean, we consider the rotary a better proposition than the one shown on page 16 of the catalogue in evidence.

Q. Being an oscillator, as you call it?

A. Which was an oscillator, but not plugoscillator. When

we developed the plugoscillator we got better results 300 from that combination than we did from the oscillating magneto as shown on page 16.

Q. But you still did not feel entirely satisfied with the operation of those devices which you have called my attention to in the catalogue as oscillating devices; you were not satisfied with them as such, were you?

A. Oh, they worked magnificently, but it was more difficult to install them. Now, when we developed the plugoscillator then, of course, it changed the application of the oscillating magneto.

Q. And the unifying of the plug and bracket also—

A. Yes, sir.

Q. —helped very much, didn't it?

A. Yes, sir; sure.

Q. Now, when the Fairbanks Morse people wanted an oscillating type you gave them the plugoscillator?

A. Gave them—we had been furnishing them the regular oscillating type as shown on page 16; but they also wanted a machine arranged with the magneto in combination with the plug.

Q. Like the Webster machine?

A. Like the Webster, and at that time I was very much interested in that VanDeventer proposition because we had no machine that was up to that time a plugoscillator; all of our oscillators were of the type as shown on page 16, and of course at that time we did not own the Webster patents, and we were a whole lot more interested in taking that particular

order than we have been since we acquired those patents, 301 as since we have owned the Podlesak patents we have made no effort to handle any of the business that was being handled by the Webster Electric Company.

Q. In other words—

A. They were paying us a royalty under those patents, and I was a whole lot more interested in the prices we were getting than the business the Webster Electric Company were taking care of.

Q. Mr. Manning, please answer the question more specifically without going into explanations except as I require them. I will ask you this question: Did VanDeventer ever claim the unitary plug and bracket?

A. I don't know what his patents claimed.

Q. As a matter of fact, this plugoscillator that you have been talking about as the VanDeventer patent, and under

which you were manufacturing these devices, was not a unitary plug and bracket, was it?

A. Yes, sir.

Q. The plugoscillator?

A. Yes, sir.

Q. And a device which the Webster people claimed was an infringement upon the Podelsak patents?

A. Possibly they did; yes, sir.

Q. So far as you know VanDeventer had no patent for it in any way, did he?

A. I don't know whether he had.

Q. Now, let us understand this thing thoroughly: When the Fairbanks Morse people wanted an oscillating type you gave them the plugoscillator?

A. Yes, sir.

302 Q. And you claimed that was a machine made under the VanDeventer patent, didn't you?

A. I don't know whether we made any claims at all as to that.

Q. Didn't it contain a unitary plug and bracket idea?

A. Yes, sir.

Q. The same as the Webster people put on?

A. No, sir; it was not the same as the Webster because it did not combine the springs with the magneto, and I understood that was a vital difference in the two machines.

Q. Then one difference was, as you understand it, and the vital difference was that the springs were applied in one instance to the magneto, and in the other instance to the spark-plug?

A. To the spark-plug; yes, sir.

Q. And that is what you considered the vital difference?

A. Well, that is certainly a difference. I don't know whether it is the principal difference. The two machines, of course, are quite different in the details of their construction.

Q. Now, the result of your supplying those 2500 machines to the Fairbanks Morse people was that the Webster sued your company down in Charleston, and alleged the manufacture of those machines as an infringement of the Podlesak patents?

A. Well, I don't remember whether it was before or after that they sued the Sumter Electrical Company down there.

303 Q. Anyway, you quit supplying those particular devices, and did not supply only the 2500?

A. We did not quit until we acquired the Podlesak patents and the Webster contracts or agreements, whereby they were paying us royalties under the Webster patents which we then owned.

Q. Well, you did not undertake to supply anybody else but the 2500; you did not supply beyond the 2500 to Fairbanks Morse, and you did not supply any more than that 2500 after this suit was brought, did you?

A. Yes, certainly, as I stated before, we have made for them some six or seven thousand of those machines.

Q. But that was after you acquired the patents from the Podlesaks?

A. I don't know how many we supplied to Fairbanks Morse before we acquired the Podlesak patents, and I have never stated here that the 2500 quantity which you have several times referred to was intended to convey the idea that we had furnished Fairbanks Morse & Company that quantity up to that time. I didn't know that it was a material question, and I just said about 2500.

Q. Now, going back, you did as a matter of fact take a contract to supply Fairbanks Morse Company with 2500 of your plugoscillators for certain types of their Z-line—is that true? You can answer that yes or no. Did you make a contract with them?

304 A. You put it in such a way that I cannot answer you yes or no.

Q. Well, cut out the 2500.

A. That is it.

Q. All right. Your company was then sued by the Webster Company for infringement—is that true?

A. I don't know whether before or after that.

Q. You continued to supply those machines, so-called plugoscillator, to Fairbanks Morse for what sizes of engines?

A. Ten and fifteen horsepower.

Q. Are those the larger sizes?

A. Yes, sir.

Q. Now, as to the rest of the line, what type of magneto were you furnishing to supply the ignition for the rest of the Z-line?

A. Rotary magnetos.

Q. Are you furnishing the rotary and magnetos now?

A. Yes, sir.

Q. And the rest of the line?

A. Yes, sir.

Q. Haven't you made a contract to equip the rest of the line except the one and a half horsepower with the plugoscillator?

A. We have recently taken an order for three and six H. P. sizes; but I don't know what that has to do with this case at all. I am very glad to give you any information that is pertinent here, but I don't want to be disclosing business that has nothing to do with the case because Mr. Brown, who is present, is a competitor of our company, but I am perfectly willing and glad to give you any information that
305 you are entitled to, but I don't want to disclose here business matters that seem to be irrelevant to the cause.

Q. Then do you not, from all the foregoing, and well within your understanding of the situation with reference to Fairbanks Morse & Company's output, know that they do consider an oscillating type or so-called oscillating type of ignition preferable over a rotary type on these other sizes?

A. Yes, sir; so do we.

Q. Now, at the present time you told me that there were certain devices which were being assembled in Chicago by some company. Who is it that is assembling those devices?

A. H. G. Saal Company.

Q. Whom are they acting for and at whose direction?

A. The Splitdorf Electrical Company.

Q. Does the Splitdorf Electrical Company pay for these assembled devices and market them?

A. The Splitdorf Electrical Company pays for them and sells them to the Sumter Electrical Company.

Q. Of Illinois?

A. Yes, sir.

Q. And the Sumter Electrical Company of Illinois takes these assembled devices and markets them?

A. Yes, sir.

Q. And what are these assembled devices—are they a type manufactured under the Podlesak patents?

A. No, sir; under the VanDeventer patents.

Q. Is it the unitary plug and bracket?

A. It is the Plugoscillator, as shown on page 41 of the
306 book No. 15 in evidence.

Q. And that is the unitary plug and bracket?

A. Yes, sir.

Q. And it is that device which you are now selling to Fairbanks Morse & Company?

A. Yes, sir.

Q. And how many of them have you sold to Fairbanks Morse & Company at the present time?

A. About 7000.

Q. Just to finish up this inquiry with reference to these assembled devices: Where does the order for making them come from—through your company or the Splitdorf Company?

A. The Splitdorf Company, which is domiciled here in this State.

Q. What do you mean by domiciled—you mean the agent of the Splitdorf Company of New Jersey?

A. No, I mean the Splitdorf Company is what ever you call it—

Q. And it has an agent here?

A. It is an Illinois corporation.

Q. The Splitdorf Company?

A. Well, to this extent: It is domiciled— Let me ask my attorney to explain that.

Mr. Secord: What he is trying to say is that the Splitdorf Electrical Company, a New Jersey corporation, is licensed to do business here as a foreign corporation.

The Witness: Yes, sir.

Mr. Wright: Q. Then the orders are issued by the 307 Splitdorf Company, a foreign corporation doing business in Illinois, by the agent of that company, the orders are issued for these goods to be assembled?

A. Yes, sir.

Q. And manufactured?

A. Yes, sir.

Q. And then when they are manufactured, instead of their being sent back to New Jersey, they are delivered to the Sumter Electrical Company of Illinois?

A. That is right, sir.

Q. And you pay to whom for them—whom does the Sumter Electrical Company pay for those goods?

A. The Sumter Electrical Company pays the Splitdorf Electrical Company.

Q. Of New Jersey?

A. Of New Jersey.

Q. And then does the Splitdorf Company of New Jersey render an invoice to you?

A. Only to those covering the goods that are manufactured; the Sumter Electrical Company of Illinois renders the invoices to the customer, that is to say, to Fairbanks Morse & Company. In other words, it is a transaction between the Splitdorf Electrical Company and the Sumter Electrical Company, first, the Splitdorf Electrical of New Jersey having these plugoscillators made in Chicago and sold to the Sumter Electrical Company of Illinois, who in turn sell them to the Fairbanks Morse Company, and bill them.

308 Q. Where is the office of the Splitdorf Electrical Company of New Jersey, licensed to do business in Chicago, Illinois, located in Chicago?

A. I am the representative of the Splitdorf Electrical Company of Illinois.

Q. Personal representative?

A. Yes, sir—I mean the Splitdorf Electrical Company of New Jersey.

Q. Is there a Splitdorf Electrical Company of Illinois?

A. No, sir.

Q. The offices of these two companies in Chicago then are the same, that is, the Splitdorf Electrical Company of New Jersey and the Sumter Electrical Company of Illinois?

A. Yes, sir.

Q. And you are the president of the Sumter Electrical Company of Illinois, and what is your official connection with the Splitdorf Electrical Company of New Jersey?

A. A representative, I suppose.

Q. That is only because you are president of the latter, which company does represent them. Is that what you mean?

A. No, I am the representative here of the Splitdorf Electrical Company.

Q. Personal representative?

A. Well, I can't tell you what I am in that respect. I have never had it explained to me, what I am.

Mr. Secord: I can explain if you want to know.

Mr. Wright: I would like to know.

309 Mr. Secord: Mr. Manning was duly appointed the agent of the Splitdorf Electrical Company of New Jersey, as required by the statute of the State requiring the appointment of an agent when a foreign corporation is authorized to do business in the State of Illinois.

Mr. Wright: Q. I wish you would state whether there is any authorization by the Splitdorf Electrical Company of New Jersey to the Sumter Electrical Company of Illinois

to represent them here in Illinois in a business way, to market the Splitdorf goods?

A. I don't know of any specially.

Q. Then you buy of the Splitdorf Company their goods, and sell them just like anybody else?

A. Yes, sir.

Q. Only that they would not sell their goods to anybody else, but only to the Sumter Electrical Company of Illinois—is that right?

A. Oh, no, they sell them to others in the same territory.

Q. But you have a working agreement between the two corporations?

A. Well, it is no agreement at all. We handle a considerable volume of the business in distributing the products of the Splitdorf plant. Some of them, however, are handled direct with the customers in this territory, which does not come through the Sumter Electrical Company at all.

Q. Well, doesn't the Splitdorf have a direct branch here?

A. There is a Splitdorf service station here; yes, sir.

310 Q. But not any other branch than yours?

A. No, sir.

Q. Doesn't the service station sell Splitdorf goods?

A. They buy them and sell them just the same as the Sumter Electrical Company.

Q. And solicit business?

A. And solicit business; yes, sir.

Q. Isn't that service station known here as the Splitdorf Electrical Company of Illinois?

A. No, sir.

Q. Just known as the Illinois station—is that true?

A. It is known—

Mr. Secord: Do you want me to explain?

Mr. Wright: Yes, I want you to explain.

Mr. Secord: I want to save time because Mr. Manning does not know the facts, I am sure.

Mr. Wright: I have no objection to it going in.

Mr. Secord: What you refer to as the—

Mr. Wright: I would like to have it go in, but Mr. Thompson might object to it as not stated under oath.

Mr. Secord: I don't want to be called as a witness.

The Witness: I think perhaps I can explain.

Mr. Secord: If you can, go ahead with it.

A. It just occurred to me, in view of your question as to the name of the Splitdorf service station here, the name of

that station is the Splitdorf Service and Sales Company, and it is an Illinois corporation.

311 Mr. Wright: I see, and there is some working agreement between the Splitdorf Service & Sales Company of Illinois and the Splitdorf Electrical Company of New Jersey?

A. I don't know.

Q. That you don't know?

A. No, sir.

Q. What is the capital stock of the Sumter Electrical Company of Illinois?

A. \$5,000.

Q. Who owns it?

A. I don't know.

Q. Whom do you pay your dividends to?

A. Don't pay any.

Q. Did you ever attend a stockholders' meeting?

A. Yes, sir.

Q. You own some of the stock yourself?

A. Yes, sir.

Q. Who else ever attended that meeting when you were there?

A. Mr. Secord and Mr. Curtis.

Q. You are president of the company?

A. Yes, sir.

Q. You preside at these meetings?

A. Yes, sir.

Q. How is the stock voted?

A. It is voted by individuals.

Q. Did those individuals that you refer to own the stock?

A. Yes, sir.

Q. Then you do know who own the stock?

A. Well, the stock is issued in their names.

Q. Now, I want to go back to the time when you first met Henry Podlesak and talked about buying the rights of the Podlesak brothers to these patents, for the Podlesak patents; and ask you what was said on that occasion.

A. I don't remember.

312 Q. How did you come to meet Henry Podlesak and take up this question of buying patents from him and his brother?

A. I don't remember. I had known Mr. Podlesak for a number of years, and when information reached me that he was going into the manufacture of these devices I asked him

if it was so and he told me yes, and subsequently—without attempting to relate the details which I don't remember at all—we began negotiations as to the purchase of the patents.

Q. Did you bring the correspondence with you that was mentioned at the morning session?

A. I went back to the office to try and locate it, but I could not. I have not seen the correspondence since the time the letters were written, and that was when I was in another office, but while I am quite sure it is some place around our office, I could not locate it in the time I had at noon. I will be very glad to.

Q. Will you look further so that it may be produced?

A. I will be very glad to look for it and produce it.

Q. You are not able to give with any certainty anything that took place between you and Henry Podlesak leading up to this option, but you remember that you did see him on several occasions prior to meeting him in the room at the hotel?

A. Yes, sir.

Q. How long before that meeting at the hotel was it
313 that you first spoke to him about buying the patents?

A. I don't remember.

Q. Was it five months?

A. I should say it was less time than that.

Q. Was anything said by Henry Podlesak that his brother had left the employment of the Webster Company?

A. I don't remember.

Q. Did you know during the time that you were talking to Henry Podlesak, with reference to this matter, that his brother Emil had left the Webster Company?

A. As well as I remember it, that was brought out at the time that Mr. Clement and Mr. VanDeventer were here.

Q. Didn't you know that they were going into business to manufacture, and wasn't that one of the reasons why you thought it would be a good plan to buy their patents?

A. Yes, sir.

Q. When did you first find that out?

A. I don't remember those details at all.

Q. It was not very long before this meeting with the Podlesaks at the room in the hotel?

A. Why, I can't say how long it was.

Q. But it was long enough before to have some correspondence about it with the home office in Charleston?

A. In Sumter.

Q. At Sumter?

A. Yes, sir.

314 Q. And the result of that correspondence, which you say you will find, was that this meeting took place?

A. Yes, sir.

Q. Aren't you able to give any conversation that you had with Harry Podlesak in reference to it?

A. I don't remember any of the details any more than that I found out that he was in—in other words, that he would, as I saw it, consider the sale of those patents and the contracts with the Webster Company, which he explained to me were very profitable as they were collecting royalties. In fact, I think he probably mentioned the amount of royalties he was collecting.

Q. Do you remember how much he said they were getting?

A. I think around—I don't remember the figures.

Q. Eight thousand dollars?

~~A.~~ I don't remember.

Q. Seven or eight thousand—

A. I know it looked to me like—

Q. (Continuing)—per year?

A. I don't remember the figures, but I know it looked like a pretty good business proposition.

Q. Well, if it interested you to the extent of buying it, as you afterwards did, why, I presume that you in some way corroborated whatever statement he made to you as to the amount of the royalties?

A. I suppose I did.

315 Q. Well, now, do you remember in what way you corroborated it?

A. I can't say definitely, but I can put it this way: I think he must have shown me a statement of the royalties he received, or something of that kind, because we had pretty good evidence that he was getting a good royalty on those, under these patents.

Q. You afterwards paid and agreed to pay, extending over a period of three years, about \$70,000 for whatever rights the Podlesaks had, didn't you?

A. I think it was sixty thousand or sixty-five thousand.

Q. Was it not \$25,000 down?

A. Yes, sir.

Q. And \$10,000 for four years?

A. Yes, sir.

Q. And five thousand for keeping out of the business?

A. Oh, yes; I overlooked the five thousand. That would be—

Q. Seventy.

A. I don't remember whether the total amount was sixty-five thousand or seventy thousand, but it has proved to be—it has worked out very nicely; the royalties under these patents amount to about fifteen or twenty thousand dollars a year.

Q. So that you will get your money back before you will have to pay Mr. Podlesak?

A. Well, we haven't yet, but we hope to.

Q. But at that same rate, you will?

A. We certainly hope so.

Q. When you were negotiating the purchase of those 316 rights, to pay that amount, you did not verify the annual royalties in any definite way so that you can tell me now what you did, did you?

A. No, but we knew what they were then, and we figured that with the Webster people handling that—I mean, handling the trade with the Podlesak plugoscillator, and as I knew their business was growing, it looked to us like the royalties would soon amount to enough to make it an investment worth while and justify our buying those patents and at the price of \$65,000.

Q. Well, then—

A. And in addition to having made that investment in the patents and royalty contracts, we eliminated the Podlesaks from the ignition field, which we were particularly anxious to do.

Q. You say eliminated the Podlesaks from the ignition field— What do you mean, the manufacture of a device that they were engaged in making subsequent to the time that Emil left the employment of the Webster Company?

A. No, as I understood it, the manufacture of the Webster plugoscillator, with the exception of the detail as incorporated in their so-called tri-polar magneto; but any of the other Podlesak magnetos would operate as well on the bracket with the plug as the tri-polar machine. So far as the tri-polar machine is concerned, I understood that the Webster Company had an exclusive license under that patent.

317 Q. And also under the patent to adjust the spark, the sparking mechanism?

A. I don't know about that. I knew that so far as the other patents were concerned, I understood the owners had the right to manufacture those devices.

Q. So that you really at that time did not have in mind the tri-polar features so much as you had the unitary plug and bracket system?

A. Yes, we had in mind that by buying those patents we would control all of the field.

Q. So that you would eventually get into the field occupied by the Websters, not only as to the unitary plug and bracket but anything else that you made?

A. Yes, sir; I understood that we would have the right to manufacture any of the plugoscillator types except the magneto known as the tri-polar Podlesak machine.

Q. And you could put your own magneto in to supply them, and put it on the unitary plug and bracket?

A. Oh, yes, had we wanted to, I understood that we could manufacture the same type of machine as the Podlesak insofar as mounting the springs on the maganeto was concerned.

Q. Did your counsel advise you at this meeting that was held at the Great Northern Hotel?

A. No, sir; I don't think the counsel advised anything as to those details at all. He simply advised that he thought the patents were good patents, and that the contracts 318 were good contracts, and he thought it was a good investment.

Q. You were familiar with the terms of the contracts between the Podlesaks and the Webster Company with reference to these various Podlesak patents?

A. Well, sir, I remember having read them, or a portion of them, but I can't say I was very familiar with them.

Q. I will call your attention to the fact that there were two contracts dated February 5, 1914, between the Podlesak brothers and the Webster Electric Company; that by the first contract the Webster Company had the right, exclusive in its nature, to make, use and sell the tri-polar magneto which you have referred to?

A. Yes.

Q. And that the second contract of that date gave the right to the Webster Company to make, use and sell, not exclusive in its nature, but being a so-called shop-right as to other devices, among them this unitary plug and bracket which you have referred to. Now, generally speaking, you

were familiar with that fact, that these two contracts covered the devices in the way that I have described?

A. I understood that the first contract you referred to covered the Webster Company exclusive license on the tri-polar machine.

Q. Upon the payment of royalties to the Podlesaks?

A. Yes.

319 Q. And that those were the royalties which you were buying?

A. I supposed so.

Q. From the Podlesaks, and which you say were a good investment?

A. Yes, sir. I was told that it was a good investment, and I think it is.

Q. And you still think so?

A. I certainly do; yes, sir.

Q. In view of the fact that the royalties payable at the time, or that were being paid at the time that you bought the Podlesak rights, were much smaller than they are now?

A. Yes, sir.

Q. And it was an exceedingly good investment for the person who put that money in?

A. Yes, sir.

Q. And it has turned out to be so?

A. Yes, sir.

Q. These two contracts cover everything in the Webster product that you wanted except that—and you would have the right under these contracts to manufacture everything in the Webster field that you wanted except tri-polar theory or idea—is that true?

A. I don't consider that they covered everything that we wanted to manufacture in the Webster field, which was the plugoscillator field, because we were already in that field with this VanDeventer plugoscillator.

Q. Did it cover everything that the Webster Company made that you wanted except the tri-polar, and that you could not get unless there was a forfeiture of the 320 tracts by the Webster people?

A. I don't understand just what you are wanting me to say there.

Q. I don't want you to say anything except what is the fact.

A. That is all I am going to say. I mean I don't understand the question.

Mr. Wright: Read it.

Q. (Read by the Commissioner)

A. Well, we did not want anything that the Webster made, as I understand it; but we did want the patent that the Podlesak brothers owned, and were going into the manufacture of in that same Webster field, in competition with Webster and ourselves.

Q. Now, let us see—let us understand that. When you began talking with Henry Podlesak, with the idea of purchasing certain rights under the so-called Podlesak patents, what did you want?

A. We wanted to control the field with the Webster Electric Company.

Q. In competition with the Webster Electric Company?

A. Not necessarily in competition with the Webster Electric Company. I say, control the field with them because it was not out purpose after we acquired the Podlesak patents to break down the business of the Webster Electric Company because we wanted to participate in the royalties which they were paying under those agreements.

321 Q. As a matter of fact, you did proceed to manufacture a unitary plug and bracket under the Podlesak patents, didn't you?

A. No, sir; under the VanDeventer patent.

Q. But it was the same, it was the same device which the Podlesaks claimed was an infringement against their patents, was it not?

A. It was the VanDeventer device, but what they claimed or what it was now I cannot tell you. That is up to—

Q. When you got the right of the Podlesaks it would quiet any claim on the part of the Webster Company against you for manufacturing—that they could maintain any claim for infringement?

A. I don't know, sir.

Q. Well, you thought so?

A. I didn't think so. I didn't know anything about it.

Q. Aren't you using those patents or manufacturing under these Podlesak patents any device whatsoever?

A. No, sir.

Q. You claim that you are manufacturing under the VanDeventer patents?

A. That is what I understand; yes, sir.

Q. But what you are supplying now in increased amounts,

as you have testified, embodies the unitary plug and bracket idea?

A. Yes, sir.

Q. Do you claim that you are not in competition with the Webster business on your so-called plugoscillator?

A. I would not consider that we are. We are not—

322 Q. Haven't you solicited any companies that are under contract with the Webster people, and that the Webster people are now supplying?

A. I don't know that we have.

Q. Well, you are the sales manager of the Sumter Electrical Company?

A. I am; yes, sir.

Q. And you would know that fact if such was the fact, wouldn't you?

A. Well, as I have just stated, I don't know of any concern that is using the Webster plugoscillator that we are now soliciting to supply the VanDeventer machine; but if it appeared to my mind advisable to do that for any commercial reason, I would not hesitate to do so, but we naturally don't want to put ourselves in the position where we are competitors with ourselves because under the existing contract with the Webster Company we are collecting royalties which we regard as a desirable revenue.

Q. How do you collect royalties?

A. Well, I say "we"—the Splitdorf Company.

Q. Then you mean by that that you do it for and on behalf of the Splitdorf Company, and then remit it to them?

A. Yes, sir; it is paid to them direct by the—

Q. But do you act as the agent of the Splitdorf Company to collect these royalty payments from the Webster people?

A. No, sir; I don't have anything to do with it. It is paid by the Webster Electric Company to the Splitdorf
323 attorneys here in Chicago, Messrs. Gann & Peaks.

Q. Then the Sumter Electrical Company have no interest whatsoever in the collection of royalties from the Webster Company, and has no interest in them—is that true?

A. Yes, the Sumter Electrical Company is interested, of course.

Q. Is what?

A. The Sumter Electrical Company is interested in the royalties.

Q. In what way?

A. Well, I cannot explain that to you.

Q. Well, wait a moment. We will keep on talking with you about this.

A. Well, all right.

Q. How much does the Sumter get, if they get anything?

A. Well, I would have to consult with my attorney about that.

Q. Well, don't you know?

A. Well, I don't care to—I don't understand the nature of the question and I think—

Q. It is not necessary for you to understand it. It is your duty to answer it.

A. I will answer it if the Court here will allow me to be advised by my attorney.

Q. Do you refuse to answer it unless you are advised by your attorney?

A. Yes, sir.

Q. You conceive that you have the right to be advised as a witness on the stand, as to whether or not you shall answer questions which are put to you in a hearing of this kind?

324 A. Well, it looks to me that I should in view of the circumstances.

Q. Well, I will inform you that you have no such right; that you are a witness and bound to answer questions as they are put to you, and that Judge Geiger, the Federal Judge in Milwaukee, will decide as to whether the questions are competent or not; and that you have no right to decide, nor any right to consult attorneys, in making up your mind to that effect. I ask you whether, after I have made that statement, you still require the advice of your attorney before your answer.

A. Yes, sir; I would prefer to have advice.

Q. Do you refuse—

A. I say, I would prefer to have the advice of my attorney.

Q. Well, I ask you now whether you refuse—not whether you prefer. Is that another question which you refuse to answer? I don't ask you whether you prefer. Is that another question which you refuse to answer?

A. Well, I don't know that I have any right to refuse or not.

Q. No, you have not unless you have some ground, as that it would incriminate you in some way. Do you mean to take the ground that it would incriminate you to answer this question?

A. Not in any sense whatever.

Q. If so, you don't need to answer.

A. No.

325 Mr. Wright: Repeat the question and I will ask you to answer that.

Q. (Read by the Commissioner)

Mr. Wright: (Continuing question) —of those royalties that are collected from the Webster people for the Splitdorf people.

A. They get them all.

Q. The Sumter people get them all?

A. Yes, sir.

Q. You have stated that as a result of this meeting at the hotel, that an option was given to you personally by the Podlesaks?

A. Yes, sir.

Q. To buy these patents?

A. Yes, sir.

Q. And you have assigned that right to the Splitdorf and Sumter Electrical Company?

A. Yes, sir.

Q. When was that contract made—September 4 of that year?

A. I think it was; yes, sir.

Q. So that a formal contract was made, a contract of sale between the Podlesak brothers and the Splitdorf and Sumter Electrical Company of Sumter, South Carolina; September 8 there was a sale by the Sumter Electrical Company of Sumter, South Carolina, of their rights—or a transfer, not a sale but a transfer of their rights under that contract to the Splitdorf Company of New Jersey—is that true?

A. I don't know those details at all. I know that the Splitdorf Electrical Company of New Jersey bought the
326 business of the corporation and its assets in South Carolina, the Sumter Electrical Company.

Q. And the Sumter Electrical Company went out of business?

A. The Sumter Electrical Company went out of business, yes.

Q. And it was going out of business, in the act of going out of business in carrying out that sale at the time that this purchase was made of the Podlesak rights, was it not?

A. I could not tell you.

Q. Don't you know as a fact that they were?

A. I don't know whether they were at that time—August, 1915; I can't tell you, sir, whether it was decided at that time to sell the business of the Sumter Electrical Company to the Splitdorf Electrical Company at that time, or to continue with the separate corporations under the royalty arrangement that had been made between the Splitdorf New Jersey Company and the Sumter of South Carolina company.

Q. Now, you were an officer, as you have said, secretary and vice president of the Sumter Electrical Company of Sumter, South Carolina?

A. Yes, sir.

Q. Up to the time that it did go out of business?

A. Yes, sir.

Q. You were familiar so far as such an officer could be familiar with the various steps that were taken to put that company out of business, weren't you?

327 A. Not very, because I was then living in Chicago.

Q. Well, just enough, not very, but just enough.

A. I knew very little about those details because considerable of the stock of the Sumter Electrical Company had passed into other hands, and I had practically nothing whatever to do with it—

Q. Well, it passed into the hands of people representing the Splitdorf people, didn't it?

A. I don't know whether you would say "representing the Splitdorf Company." They were interested in the Splitdorf Company.

Q. As a matter of fact, on the 22nd day of August there was a meeting called of the stockholders of the Sumter Electrical Company of South Carolina to confirm the sale, which you have referred to, to the Splitdorf Company of New Jersey—isn't that so?

A. I don't remember.

Q. Well, you do know that there was a notice published, don't you?

A. I know that there was such a notice published, and the transaction was—

Q. Consummated?

A. Consummated, yes, sir.

Q. The only point that you don't want to be particular about is as to the date?

A. Exactly so.

Q. You do know as a matter of fact that that was prior to

the purchase of those patents from the Podlesaks, don't you?

328 A. As you now refresh my memory, I realize that it was.

Q. You do?

A. Yes, sir.

Q. When those two gentlemen and you met in that hotel, they were equally and as well informed as yourself that the moment that you took an option to buy these Podlesak patents, that the Sumter Electrical Company was in process of dissolution, and that such dissolution had been approved by its stockholders at a meeting held prior to that meeting in the hotel that you have referred to?

A. Well, what those gentlemen knew or thought about it, I really could not say.

Q. You knew it?

A. It was not a matter—

Q. You knew it?

A. It was not discussed at all. I suppose I knew it, but it did not enter into this Podlesak transaction at all.

Q. You say it was a very good investment to buy these patents of the Podlesaks, don't you?

A. Yes, sir.

Q. And you didn't have the sixty-five—seventy thousand dollars that you were going to put in; you were not going to buy these royalties for yourself, were you?

A. No, sir.

Q. And you took that option for the purpose of assigning it to somebody?

A. Yes, sir.

Q. And there wasn't any discussion at that meeting as to who that "somebody" was?

A. No, sir.

329 Q. Whether it was the Sumter Electrical Company or the Splitdorf?

A. No, sir.

Q. As a matter of fact on the 4th day of September following, 1915, you did make an assignment of that option to the Splitdorf and Sumter Electrical Company of South Carolina—a sale? That is to say, all your rights under that option passed to those two people, two concerns—is that true?

A. I know that there was such a transaction consummated, but I don't remember those dates.

Q. Was such a transaction consummated subsequent to your taking of that option? It must have been, mustn't it?

A. Absolutely, yes.

Q. It was along in September, and you don't want to pin yourself down to the 4th of September?

A. I would do that, pin myself down to the dates if I had the records.

Q. But you are perfectly willing to testify to the sequence of those events because you remember them—

A. Sure, they are all matters of record.

Q. They are matters of independent recollection. You remember the sequence of those events, don't you, and know it of your own knowledge, don't you?

A. Well, as you recite the occurrence of those transactions, I do recall that they came along in that way that you have mentioned.

Q. Very well. Then this sale to the Splitdorf and Sumter Company of your option took place, to the Splitdorf and Sumter Company of South Carolina, after it, the Sumter Electrical Company of South Carolina, had gone out of business?

A. That is what you say, and I presume you are stating that—

Q. I am not testifying. I am asking you, isn't that true?

A. I don't know.

Q. I will go back and ask this all over again. You may make me take up five more pages of record.

A. Well, I cannot establish dates, Mr. Attorney, when I don't know.

Q. I am asking you to establish the sequence of events.

A. Well, I am trying to do that and will be glad to answer the questions.

Q. You have told me that in August the Sumter Electrical Company of South Carolina went out of business—is that true?

A. You told me that, and I told you I thought that was the time. I have not—

Q. Anyway, you did tell me and you so state now that it was prior to the time of the taking of that option?

A. Well, if the facts are in accordance with what you say. I don't know that. I am quite positive of this, that at the time that the option was given to me by the Podlesak brothers, that the Sumter Electrical Company had not sold out to 331 the Splitdorf Electrical.

Q. But was in process of selling?

A. Well, I don't even know that it was.

Q. Well, it sold out, but the stockholders had not confirmed it—is that what you mean?

A. I do not even know that that is so because those are details I did not bother with.

Q. You do know that in August some time there was a meeting advertised of the stockholders to attend and approve of the sale of the Sumter to the Splitdorf?

A. I could not tell you whether it was in August until I could see the records. I don't remember.

Q. What record have you got that you could see that would help you in that respect?

A. Why, I suppose the only records I have would be the records in connection with these Sumter and Webster cases that you are talking about. I have no records of my own.

Q. Let me ask you whether, as secretary and stockholder—whether as vice president and secretary and stockholder of the Sumter Electrical Company of South Carolina, you were informed of any meeting to be held of the stockholders to confirm the going out of business of that company.

A. I am sure I must have been.

Q. Don't you know you were?

A. Well, I can't swear that I know I was, but I am satisfied that I was informed of all transactions of importance that were necessarily accomplished in the process of that business transfer there.

Q. And you were present then at a meeting of the stockholders to confirm the sale?

A. I don't think I was.

Q. But you heard of it?

A. Yes, sir.

Q. And this contract that was made between the Podlesaks and the Sumter and Splitdorf Company was made after the dissolution of the Sumter Electrical Company of Sumter, South Carolina—isn't that true?

A. I don't understand that.

Q. (Read by the Commissioner)

A. I am quite sure it could not have been so. Of course, that is a matter of record that I cannot inform you on.

Q. I don't doubt it is a matter of record. I want your independent recollection of it, and I may be able to refresh your recollection before I get through.

A. Well, I don't know.

Q. First, I will turn to a copy of the contract, which is Exhibit F, annexed to the copy of the bill of complaint filed in the Federal Court in Chicago in the case of Webster Electric Company against Podlesak brothers, Splitdorf Electric Company of New Jersey and the Sumter Electrical Company of South Carolina; and call your attention to the fact that at page 95 where said exhibit appears, the same is dated on the 4th day of September, 1915. Please examine that and verify my statement as to that date. (Hand-
333 ing paper to witness) Is that true?

A. The 4th day of September, 1915; yes, sir.

Q. Is that true?

A. Yes, sir.

Q. That was after the meeting between you and Mr. Van-Deventer and Mr. Clement—

A. Yes.

Q. —and the two Podlesak brothers in the hotel room in the Great Northern Hotel at Chicago, was it?

A. Yes, sir.

Q. Do you remember how long afterwards?

A. No, sir.

Q. Do you remember that within four days after the contract was made, dated September 41, 1915, which is Exhibit F which I have called your attention to, there was another contract made or that there was an assignment of this contract made by the Sumter Electrical Company to the Splitdorf Electrical Company—do you remember that?

A. I remember that there was a number of papers drawn up, and whatever was necessary to complete the transfer of those patents to the Splitdorf Company was done; but as to the details and dates, I have no recollection.

Q. Now, I will call your attention to a copy of an assignment, which I have just called your attention to, and which I will ask the Commissioner to identify as Defendants' Exhibit 5, and will ask to have the same incorporated in the record as an exhibit, and will now hand the same to you.

(Handing paper to witness)

334 (Whereupon the assignment shown the witness was marked as Defendants Exhibit 5 with the initials of the Commissioner for identification, and was read to the witness in words and figures as follows:)

“DEF. EX. 5 F. H. S.

Assignment.

Whereas, Sumter Electrical Company, a corporation organized under the laws of South Carolina, entered into a written agreement on or about September 4, 1915, in which Emil Podlesak, of Racine, Wisconsin, and Jenry Joseph Podlesak, of Chicago, Illinois, were parties of the first part and Splitdorf Electrical Company, a New Jersey corporation, and said Sumter Electrical Company were jointly parties of the second part;

And, Whereas, on September 8, 1915, said Sumter Electrical Company executed a written agreement to assign all its rights arising out of or flowing from said agreement entered into on or about September 4, 1915, to said Splitdorf Electrical Company;

And, Whereas, the said Sumter Electrical Company is in process of dissolution pursuant to the laws of South Carolina;

And, Whereas, it is provided in Volume 1 of the Civil Code of South Carolina, for the year 1912, at page 771, Section 2815, as follows:

Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them; they shall have power to meet and act under the by-laws of the corporation and under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price, for all or any part of said property.

And, Whereas, Charles T. Mason, Harry R. VanDeventer, and Frederick C. Manning, were members of the Board of Directors of the said corporation at the time it surrendered its charter and begun to dissolve as a corporation, and the said Charles T. Mason, Harry R. Van Deventer and Frederick C. Manning, constituted a majority of the Directors of the said corporation at that time, and thereupon became trustees of the said corporation and entered upon the charge of their duties as such trustees pursuant to the terms of the statute law of South Carolina.

Now, Therefore, in consideration of One Dollar (\$1.00)

and other valuable considerations, the receipt of which is hereby acknowledged, the said Charles T. Mason, Harry R.

VanDeventer and Frederick C. Manning, they being a 336 majority of the trustees of the said corporation, do for themselves and for the said Sumter Electrical Company, hereby assign, transfer, set over, and deliver unto the said Splitdorf Electrical Company, all of the rights of the said Sumter Electrical Company, and of themselves as such trustees, arising out of or flowing from the said agreement entered into on or about September 8th, 1915, and also all of the rights of the said Sumter Electrical Company and of themselves as trustees arising out of or flowing from a certain writing executed by Emil Podlesak and Henry Joseph Podlesak at the City of Washington in the District of Columbia on the fourth day of September, A. D. 1915, and also afterward executed or to be executed by the said Sumter Electrical Company and the said Splitdorf Electrical Company, this being the agreement referred to in the first paragraph hereof.

In Witness Whereof, the said Charles T. Mason, Harry R. Van Deventer and Frederick C. Manning, trustees, have executed this assignment at Sumter, South Carolina, this 26th day of September, A. D. 1916.

CHARLES T. MASON

Trustee.

HARRY R. VAN DEVENTER

Trustee.

FREDERICK C. MANNING,

Trustee.

State of South Carolina }
County of Sumter } ss:

We, Charles T. Mason, Harry R. Van Deventer, and Frederick C. Manning, trustees for the said Sumter Electrical 337 Company, being first duly sworn, depose and say, that we have full power to make and execute the foregoing assignment on behalf of Sumter Electrical Company and that the execution of said assignment is our free act and deed on behalf of ourselves individually and of said Sumter Electrical Company.

CHARLES T. MASON

HARRY R. VAN DEVENTER

FREDERICK C. MANNING,

Sworn to and subscribed before me September 26th, A. D. 1916, at Sumter, South Carolina.

(Seal)

R. A. BRADHAM,
Notary Public in S. C.

South Carolina, {
Sumter County. }

In consideration of the sum of Five Dollars (\$5.00) to it in hand paid at and before the signing of these presents (the receipt whereof is hereby acknowledged) paid by the Splitdorf Electrical Company, a corporation created under the laws of the State of New Jersey, unto the Sumter Electrical Company, a corporation created under the laws of the State of South Carolina; the said Sumter Electrical Company hereby agrees and binds itself to assign, transfer, set over and deliver unto the said Splitdorf Electrical Company on demand—all the rights of the said Sumter Electrical Company arising out of or flowing from a certain writing executed by Emil Podlesak and Henry Joseph Podlesak at the City of Washington in the District of Columbia on the fourth (4th) day of September, A. D. 1915, and also afterward executed or to be executed by the Sumter Electrical Company and the Splitdorf Electrical Company.

In Witness Whereof the Sumter Electrical Company has caused these presents to be signed by its President thereunto duly authorized and attested by its Asst. Secretary thereunto duly authorized on this the 8th day of September, A. D. 1915.

SUMTER ELECTRICAL COMPANY.

By (Signed) C. T. MASON,
President.

(Seal)

Attest:

(Signed) E. H. RHAME
Assistant Secretary.

State of South Carolina {
County of Sumter } ss.

I, E. H. Rhame, one of the Notaries Public for South Carolina, do hereby certify that Charles Thomas Mason, whose name as President of the Sumter Electrical Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Give under my hand and seal this 8th day of September, A. D. 1915.

(Signed) E. H. RHAME,
Notary Public for South Carolina.”

(Seal)

Q. Now, having read it to you, I will ask you: This assignment purports to be signed by Charles T. Mason, Harry R. VanDeventer and Frederick C. Manning on the 26th day of September, 1916. Are you the Frederick C. Manning who signed the same?

A. Yes, sir.

Q. Is the rehearsal therein, that on September 8 the said Sumter Electrical Company executed a written agreement to assign all of its rights arising out of or flowing from said agreement entered into on or about September 4, 1915, to said Splitdorf Electrical Company—is that a rehearsal of that agreement of September 26, which you have just stated you signed as trustee, true?

A. So far as I know.

Q. Now, is your memory refreshed that the 4th day of September, 1915, is the date of the agreement between the Podlesak brothers and the Splitdorf and Sumter Company of South Carolina, and that September 8 is the date of the agreement to assign by the Sumter Electrical Company of 340 South Carolina to the Splitdorf Electrical Company of New Jersey?

A. It seems to be so, according to the records.

Q. You signed this agreement that I have called your attention to as one of the trustees in the dissolution, didn't you?

A. I think so, yes.

Q. And therefore you know not only that the Company was in process of dissolution, but you know that some time prior thereto it was in process of dissolution, don't you?

A. These transactions were being consummated, but I personally was not in touch with it at all. I was in Chicago and all of this matter was handled at Sumter, South Carolina.

Q. You signed the document?

A. Yes, sir.

Q. And you read it over at the time presumably, didn't you?

A. Yes, sir.

Q. So that you were familiar with the contents of it?

A. Yes, sir.

Q. And you know that prior to that time you had had a meeting with the Podlesak brothers, in which you had taken from them an option to purchase these patents if you chose to exercise it?

A. Yes, sir.

Q. Now, the Sumter Company was going out of business at

this time, and was in process of dissolution. That is true, isn't it?

A. (No response)

Q. You nod your head. You mean yes?

341 A. Yes, the Sumter— Just read that.

Q. (Read by the Commissioner)

A. I don't know—I know it was negotiating this sale with the Splittdorf Company at that time.

Q. At the time that you were having these meetings with Henry Podlesak with a view to purchasing from him and his brother the rights of the Podlesak patents?

A. Yes, sir; but at that time I was not connected with any company but the Sumter Company of South Carolina.

Q. Naturally.

A. Yes, sir; and any transactions or any conversations that I had with Mr. Podlesak were naturally in the name of the Sumter Electrical Company of South Carolina,

Q. But when it came to taking the option you took it in your own name?

A. Yes, sir.

Q. And you could not have expected that you would transfer that to a company that was going out of business, could you?

A. I didn't think much about it. The option was simply drawn that way by our attorney, and the transaction was handled as shown by the record.

Q. One of the men, who were present in that room at the time that the option was drawn, was from the home office?

A. Yes, sir.

Q. Fresh from the home office?

A. Yes, sir.

342 Q. He knew everything that was going on down there?

A. Yes, sir.

Q. If there was a dissolution going on he knew it;— he should have known it better than you, because you excuse yourself by saying you were up here.

A. I suppose, of course, he knew it; but I don't understand what that has to do with this.

Q. It is not necessary for you to understand it. I am asking you a question and you answer that. This Mr. Van-Deventer was a stockholder, wasn't he?

A. Since hearing this instrument here you have just read I am reminded of the fact that he was a stockholder, because—

Q. And a director?

A. Because he is a director now—I mean he was at that time.

Q. Yes.

A. But I had entirely overlooked that when you asked me once earlier in the hearing whether he was a stockholder or an officer.

Q. So he knew that the company was going out of business when you took the option in your own name?

A. He must have known it.

Q. Why, certainly, and the attorney who came on?

A. Sure.

Q. You all knew when you took this option that the company was going out of business?

A. Well, I don't know how the Sumter Company—I mean, how it happened to be handled that way.

343 Q. I don't ask you to tell me that.

A. Or in my name or the Splitdorf Company. Those are details that were entirely up to our attorney. I am not familiar with any of those things.

Q. I don't care whether you answer this question as an attorney or not. I am asking for the fact.

A. That is what I want to tell you.

Q. Didn't all of you know at the time you gathered together in that room with the Podlesaks, and took this option in your own name, that the Sumter Electrical Company of South Carolina was going out of business?

A. Sumter, South Carolina.

Q. Sumter, South Carolina?

A. Yes.

Q. You can answer that yes or no.

A. Yes, sir; I would—

Q. Well, you did, didn't you?

A. Yes, sir.

Q. Now, that is enough. Now, therefore, you did not intend to convey or have this right or option of yours taken up by the Sumter Company, did you?

A. Yes, sir. Now, you asked me in the question above whether I knew that. That is to say, whether I knew that the Sumter Company was going out of business. I don't recall that I did know that, because whether the transaction had actually been decided upon to the point that it was to be consummated I do not know, and as I now recall the thing, it would seem that there was not anything definite as to

344 that. If so, it is strange that our attorneys would have considered the Sumter Company at all in the transfer of the Podlesak patents if they had known of it at that time.

Q. This is argument on your part, pure argument, isn't it?

A. No, I am just trying to make clear to you what I have intended to convey there in my answers as covering statements that I knew at that time.

Q. Now, answer me this question: Were you or were you not a stockholder, director, secretary and vice president at the time indicated in that agreement, the 26th day of September, 1916, of the Sumter Electrical Company of South Carolina?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. And trustee in dissolution?

A. Yes, sir.

Q. Did you sign the agreement—

A. Now, one minute. As to the trustee, I don't recall what that trustee was. I have forgotten it.

Q. Didn't you know when I showed you that document that you were trustee in dissolution of the affairs of the Sumter Electrical Company?

A. It seems that I was, yes.

Q. Don't you know it now?

A. But whether it was a trusteeship, appointed prior to this transaction with the Podlesaks that you are discussing here, is not clear to my mind at all. I don't know what difference that makes.

345 Q. I don't care whether you know whether it makes any difference or not. We will get along quicker in this thing if you will answer my question.

A. I don't care about anything, except that I don't want to be misunderstood in this testimony, and I only want to state the facts so far as I know them, and I don't want to guess any more than is absolutely necessary.

Q. You don't want to guess any more. Have you been guessing in your previous answers?

A. No, I have not. I have stated the facts so far as I can recall them.

Q. Then will you withdraw that statement from the record, that you do not want to guess any more?

A. Well, you asked me questions in such a way and exhibit so much stuff here that I must say that some of my re-

plies have been more or less, "I think so," Mr. Wright. There is nothing that I know—you just remarked to Mr. Brown that you were going to question me until I told you what I knew.

Mr. Wright: You overheard me say that?

A. Yes, sir.

Q. What do you want to say in reference to that?

A. Why, that there is nothing that I know that I am trying to hold back from you in any sense whatever, and if you will just question me I will be glad to tell you the facts so far as I know them, but I am anxious to get through as quickly as possible, to get back to my office.

346 Q. You will get back to your office just as soon as you answer my questions. A few moments ago you indulged in something about "guessing" and doing the best you could, and all that sort of thing. I want you to understand that your answers must be accurate and exact.

A. Well, I am doing the best I can to make them so.

Q. Now, I call your attention to that agreement signed by you as trustee, and call your attention to the fact that it provides that under the laws of South Carolina a director becomes a trustee in dissolution. Is that true or isn't it true—is it in that agreement or isn't it in that agreement?

Mr. Secord: You don't need to answer that, Mr. Manning. The agreement speaks for itself.

Mr. Wright: Please put that down on the record, that counsel representing the witness here makes that remark.

The Witness: That is exactly what I was going to say, that I can only answer what the record shows. I am not familiar with these technical legal terms or these expressions or anything of that sort, and I am not at all competent to tell you what the law of South Carolina is.

Q. I don't ask you to tell me what the law of South Carolina is. I ask you whether that agreement, to which I called your attention, provides that under the law of South Carolina you, as a director of the Sumter Electrical Company
347 of South Carolina, became a trustee in dissolution of it.

Does it or doesn't it?

A. The records will speak for themselves.

Q. A record is not in question here. It is a question whether in that document which I show you it does so provide.

A. I do not know.

Q. I will show it to you. I also wish to caution counsel that pretends to be here representing the witness, that he has

no right to address himself to the witness; that we are before a Commissioner as if we were before the Court, and that if it is necessary to protect this proceeding it will be done.

Mr. Secord: You don't need to caution me, Mr. Counsel.

Mr. Wright: If you have anything more to say I will ask to have you withdrawn from the room. Now don't say it.

Q. I wish you would read that agreement or that so-called assignment, which you say you signed, under date of September 26, 1916, and ask you whether it provides that a director shall be a trustee. (Handing paper to witness)

A. Well, I don't see any need of my reading this thing. I don't know anything about it when I get through with it.

Q. I will read it to you.

A. All right.

Q. (Reading) "And, Whereas, it is provided in Volume 1 of the Civil Code of South Carolina, for the year 1912, at page 771, Section 2815, as follows:

348 "Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property," and so forth.

A. Those are the words that you have just read to me; yes, sir.

Q. Then when you signed that agreement as trustee, you signed it by virtue of the fact that the law provided that a director of that company should be a trustee in dissolution?

A. I only know what you have read there. I don't know anything about the law or anything of the kind.

Q. Well, you did sign that agreement, did you?

A. I signed it; yes, sir.

Q. And that was after you took this assignment; it was after you took this option from the Podlesaks?

A. Yes, sir.

Q. And you took the option from the Podlesaks back in August prior to September 26, didn't you?

A. Yes, sir.

Q. Now, please answer the question which I put to you some time ago, and which preceded all this difficulty: Whether at the time that you took this option from the Podlesaks the Sumter Electrical Company of Charleston, South Carolina, was in process of dissolution.

A. Well, sir, I don't consider that I am competent to answer that question. I don't understand it well enough to
349 make a definite statement.

Q. You don't want to answer it, do you?

A. I am perfectly willing to answer it, but I don't know what you are driving at.

Q. It doesn't make any difference whether you know or not.

A. I only have to answer what I know to be a positive fact, and you are asking for my opinion here on something.

Q. I am not asking your question.

A. What is it?

Q. I will repeat the question: When you took that option from the Podlesak brothers back in August, 1915, did you or did you not know that the Sumter Electrical Company of Sumter, South Carolina, was in process of dissolution?

A. I cannot make a definite answer; but I will say this, that so far as I am concerned I do not know whether it was or was not, but from the evidence—I mean from the exhibits here shown, it would appear that I was familiar with the transaction as being in process between the Sumter and Splitdorf Companies regarding a sale of the Sumter Company's business to the Splitdorf Company of New Jersey.

Q. Now, have you got that option that the Podlesaks gave you?

A. Have I got it?

Q. Yes.

A. No, sir.

Q. Do you know where it is?

A. No, sir.

Q. You considered this a pretty good investment for you to take in behalf of whomever you were going to assign it to, didn't you?

A. Yes, sir.

350 Q. The Sumter people didn't have any money to invest, did they?

A. Oh, yes, they had some money.

Q. What?

A. The Sumter Electrical Company had some money.

Q. Well, they were going out of business, weren't they?

A. This transaction was on that you have just referred to above.

Q. Then it would be Splitdorf money, wouldn't it?

A. Yes, sir.

Q. Who was it paid for the assignment when it was made?

A. I paid for it.

Q. Personally?

A. Yes, sir.

Q. You paid for the option, you mean?

A. Well, I paid for the—that is to say, I paid for it with a check that was in my name.

Q. Why, Henry Podlesak has testified that he got a Splitdorf check, didn't he get it from the Splitdorf Company?

A. He got a Splitdorf check payable to me.

Q. And you endorsed it to him for the benefit of Henry Podlesak and his brother Emil?

A. Yes, sir.

Q. So that it appeared on the check where the money came from, namely, the Splitdorf Company of New Jersey?

A. It was a Splitdorf Electrical Company check of New Jersey for \$25,000 payable to F. C. Manning.

Q. And F. C. Manning endorsed it payable to—

A. To Emil and H. J. Podlesak.

351 Q. As to the money that has been paid since that \$25,000 was paid, was it paid in just exactly the same way?

A. I don't remember how it was paid.

Q. You only remember the \$25,000?

A. Yes, sir; I remember it was in my name. I had the check for a couple of days.

Q. It was a very good investment for the Splitdorf Company to send up their money and invest in this royalty contract, as it eventuated?

A. I think so.

Q. What?

A. I would consider it a good investment.

Q. The Splitdorf Company are investing money, are they?

A. I don't know.

Q. Well, they did in that event according to your idea?

A. Yes, sir.

Q. They invested it because it was a good place to put money?

A. I don't know why they did it. They gave me a check for the \$25,000.

Q. A few moments ago you told me that it was an exceedingly opportune investment by which a considerable amount of money might be realized?

A. I consider it so. I am sure they did.

Q. They were in the manufacturing business, weren't they?

A. Yes, sir.

Q. They were not investing in royalty payments as a banker or a money-loaner, were they?

A. They were manufacturing an ignition equipment.

352 Q. What they wanted then was to invest in something which was going to help the ignition equipment business—isn't that so?

A. Yes, sir.

Q. And that is what you understand they were buying?

A. Yes, sir.

Q. And incidentally they made a very good investment by coming into something which would return in royalties more than they paid for it?

A. Yes, sir.

Q. And they got the ignition business thrown in like the tail with the hide—is that it?

A. I don't understand what you mean.

Q. Well, the tail is the small end of the beast and the hide is the big end—eh?

A. Well, I think they got a good deal of the beast in with it.

Q. Didn't they know which was the tail end and which was the hide?

A. I don't know just how you mean by referring to it in that way, but they acquired an interest in these Podlesak patents.

Q. They got them as the hide, did they—the most important thing to them was the interest in the Podlesak patents?

A. No, I think the most important thing to them was the—

Q. The investment feature?

A. The royalties to accrue on the investment.

Q. Then the very small end of the transaction was the fact that along with the very nice investment, which
353 turned out so profitable to them as an investment in dollars and cents, putting in \$75,000 and getting back at the rate of \$18,000 a year, they got the small end of it besides the little something that the Podlesaks were interested in—is that your idea?

A. I don't know. I don't understand it the way you put it. I can't answer that kind of questions.

Q. Well, I am just going to ask you another question about that. It is very interesting. Who got these royalties?

A. I have just stated that the Sumter Electrical got them.

Q. Then the royalties were not very important to the Splitdorf people, were they?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. Well, they gave them to you—they give them to you people?

A. Yes.

Q. And they did get, as a matter of fact, some rights, whatever they were, that the Podlesaks had in these two contracts?

A. And patents.

Q. What other patents were they that they got an interest in besides these that were mentioned in these two contracts?

A. All of the patents that were acquired from the Podlesaks.

Q. Was there any besides?

A. I don't know.

Q. Is there one with reference to a removable magneto that has been since passed over to the Sumter or the Spltdorf by Emil Podlesak?

A. I don't know of that.

354 Q. If there is such a patent pending or granted with reference to a removable magneto, and not covered by these two contracts, you don't know anything about it?

A. No, sir; I don't know anything specific. I know there is something, some transaction in connection with patents in process that I have heard something about, but I don't know the details of it at all.

Q. With reference to this removable magneto—

A. I just said I do not know what those patents cover, Mr. Wright.

Q. But there are some applications, or applications for patents since taken out, or in the patent office, by either one of the Podlesak brothers or both of them, that are now subject to negotiation or that are in process of negotiation between the Spltdorf Company and the Podlesaks?

A. If there are, I don't know it.

Q. Did the Sumter Electrical Company of South Carolina ever put a dollar into this purchase of these rights from the Podlesaks?

A. I couldn't tell you. I don't know.

Q. You have no knowledge that they did?

A. No, sir.

Q. Although you appear to have been vice president, secretary, director and trustee, you have no knowledge of the

Sumter Electrical Company of South Carolina—you have no knowledge that they put a dollar into it?

A. No, sir.

Q. And if they did it is something that you are entirely unfamiliar with?

A. Yes, sir.

Q. You do know as a fact that the Splitdorf Company paid the consideration as you have testified?

A. Yes, sir.

Q. Did the Sumter Electrical Company of Illinois ever put a dollar into this purchase price of these patent rights from the Podlesaks?

A. I don't know how to answer that.

Q. Well, you are president of the company?

A. Yes, sir.

Q. Did the Sumter Electrical Company of Illinois put in a dollars for the purchase of these Podlesak contracts?

A. I don't think it was in existence at that time, sir.

Q. Has it since?

A. Yes, sir.

Q. How much?

A. I don't know.

Q. You are president of the company?

A. Yes, sir.

Q. You would know—you should know and be familiar with that fact, shouldn't you?

A. Well, it is easy enough to find out.

Q. Will you please find out and report that with the correspondence which I have called for?

A. Yes, sir.

Q. Now, directing your attention to the Podlesak contracts again: There was a question of good-will. What good-will did you buy of the Podlesak brothers under that option to you?

A. I don't know.

Q. Whatever good-will they had was not good-will that they had given to the Webster people to use their name, was it?

A. I don't know.

Q. Don't you know what the good-will that the Podlesaks were selling you was?

A. Well, where is it mentioned, good-will? I don't know anything about any good-will. I know that all patents and agreements and contracts that they had with the Webster

Company as to the good-will, I don't know whether that was a point that we considered. I am sure, however, we got all we were entitled to under those transfers.

Q. At the time that you took this option were you familiar with the situation existing between the Webster Electric Company and the Podlesaks, with reference to the payment of back royalties?

A. I don't know anything about that.

Q. Or claimed for back royalties?

A. No, sir; I don't know anything about that. All I know is that I was hearing something as to some differences they had, but as to the details it did not interest me and I don't know anything—

Q. You knew there were some differences between the Podlesaks and the Webster Electric Company as to the payment of royalties accruing prior to the 1st day of July, 1915?

A. Well, I have just used that word "differences," but I don't know what it was.

Q. But whatever it was, they were included in the purchase, and you were entitled to the benefit of those differences, were you?

A. I don't remember that. I presume that at the time the option was drawn up they agreed that when the Webster Company paid them the royalties for the ensuing or that quarter, that the Podlesak brothers would be—I mean, a certain amount of that was to go to the Podiesak brothers and the balance to the Splitdorf Company.

Q. And that was the portion of the royalties which accrued between the 1st day of July, 1915, and the 1st day of October, 1915, and the sale to you was in that quarter?

A. Yes, sir.

Q. So that what accrued prior to that time they would retain?

A. I don't know anything about that, whether that was discussed. I don't see how the Splitdorf Company would have any interest in royalties accruing before the time the patents were sold to the Splitdorf people.

Q. Did you know that there was a default declared or a claim of default made by the Podlesak brothers against the Webster people because they had not paid all the royalties which had accrued prior to the 1st day of July, 1915?

A. Mr. Wright, I am not familiar with any of those matters.

Q. That was not discussed between Henry Podlesak and

Emil Podlesak and the attorney of the company and yourself?

A. It may have been, but I don't remember anything about it.

358 Q. You would not say that it was not?

A. I don't remember that it was or that it was not.

Q. You would not say there was not any discussion there as to the question of a default which had accrued prior to the 1st day of July, 1915?

A. You mean now a matter between the Podlesaks and the Webster Electric Company?

Q. Yes.

A. I don't think it was discussed at all. I don't see why—

Q. They said there was some difference—you understood there was some difference about the adjustment of royalties prior to the 1st day of July, 1915?

A. I am just trying to remember whether that matter was referred to, but I cannot state definitely whether it was.

Q. If there was a default, you bought the right to benefit by that default, didn't you?

A. I don't know whether we did or not, sir.

Q. You wanted the tri-polar construction if you could get it, didn't you?

A. No, sir; we had no need for it whatever; wouldn't have used it.

Q. If there was any default made by the Webster Electric Company prior to the 1st day of July, 1915, you would insist upon the right whatever it was, wouldn't you?

A. Positively no, because I would not use it if I had it.

Q. Why wouldn't you use it?

A. Because I consider the VanDeventer machine a
359 better proposition. The Webster tri-polar machine is an inductor machine, and I don't like that for the character of ignition that the equipment is used for. I would rather have a rotary or what is known as a Siemens type or shuttle-wound armature machine.

Q. The Webster type gets the bulk of the business in that line, doesn't it?

A. It gets the bulk of the business, yes, sir—I don't know, however, Mr. Wright, that the fact of the Webster machine having a tri-polar magneto has anything to do with that.

Q. If you forfeited the contracts under any claim made by the Podlesaks prior to July 1, 1915, or by you at any subsequent time—and by "you" I mean the Splitdorf Company,

you would get all the Webster business, wouldn't you—you would have the exclusive right then to make the tri-polar magneto?

A. No, sir; because we would not use it.

Q. Wouldn't you use it and get all the profits in that field, instead of getting a mere royalty from the manufacture by the Webster in that field?

A. No, if I wasn't manufacturing all the oscillating type of magnetos of that unitary structure that are made, I would make them like the VanDeventer machine.

Q. Then you would really like to limit the competition and put the Webster out of business?

A. No, I don't want to put the Webster out of business—not now. Before we acquired the Podlesak patents I had no desire to see the Webster people stay in business, as I have not for any other competitor. They were competitors of ours; but we eliminated that relationship by acquiring the Podlesak patents, and it placed us in a position where it was "the Webster Company and ourselves," as it were.

Q. And the Webster had to account to you?

A. Yes, the Webster Company pay the Splitdorf Company the royalties. It did not mean a bit more expense, except as resulting from these law suits which the Webster Company have instigated—

Q. Well—

A. (Continuing) —than the royalties which they were originally paying the Podlesak brothers; but we certainly, by eliminating the Podlesak brothers, have broadened the field for the Webster Company.

Q. Well, in what way are you broadening the field for the Webster Company if you have got a better device than they have?

A. Why, we, by acquiring the Podlesak patents, we eliminate the Podlesaks from the field and reduce the Webster competition to ourselves, and we naturally, as receiving royalty from the Webster Company, are not working very hard to break down the business of the Webster Electric Company.

Q. But you can put the Webster Company out of business any time you want to if there is a forfeiture, isn't that true?

A. Well, if there is any such possibility as that I never knew it, but I certainly don't want to, as long as it is run as well as Mr. Brown is doing—

Q. What did you pay the Podlesaks for quitting business?

A. \$5,000.

Q. What did you pay the \$65,000 to him for?

A. The patents and contracts.

Q. Then the contracts were not worth anything according to that?

A. Why, isn't that what we are collecting the royalty under?

Q. But I say, you only bought them to get the royalty?

A. We bought them to get the patents away from the Podlesak brothers.

Q. Well, you paid five thousand for them?

A. No, we didn't.

Q. What did you pay?

A. We paid them five thousand for agreeing to stay out of the ignition field.

Q. What did you pay the sixty-five thousand for?

A. For the patents and the contracts.

Q. What part of it did you pay for the contracts—for the royalties?

A. I don't think we ever tried to draw a dividing line there.

Q. But you made a good investment out of it?

A. I think we did.

Q. You paid the greater part of the consideration in order to make a good investment; you didn't pay anything for these patents?

A. We paid \$65,000 for the patents and the contracts.

362 Q. Well, you don't regard the patents as of any comparative value?

A. Well, I don't know anything about what the patents were worth or anything of the sort.

Q. Well, you would not use them?

A. No.

Q. And you bought them to get the Podlesaks out of business then?

A. No, we bought it—I can't tell you as to what the patents are worth, or the contracts, or anything of that sort, Mr. Attorney. I can only tell you that when Mr. Podlesak and I got together we decided on a price that would give us the ownership of the Podlesak patents, and give us the contracts under which the Webster Company were operating and paying royalties, and would give us with the Webster Company a monopoly of the field.

Q. If Henry Podlesak testified that he gave notice of forfeiture to the Webster Electric Company, at the request of the Splitdorf Electrical Company and the Sumter Electrical Company, is it true—did he state the truth when he made that statement?

A. Mr. Wright, I don't know anything about that matter. That is something that our attorneys handled, and I don't know anything about it.

Q. Then you did not want those contracts forfeited at the time that Henry Podlesak was actually serving notice upon the Webster Company, that, as the attorney for the Splitdorf and Sumter people and for his brother and himself, that the same should be forfeited?

A. No, that is a matter that I don't know anything about and don't care anything about. I am perfectly satisfied with the situation as it exists to-day.

Q. Then you are giving your personal opinion and not what your company wanted. You don't know what the Splitdorf or the Sumter Electrical Company of South Carolina wanted?

A. All I can tell you is what I wanted—or I am perfectly satisfied with the arrangement as it is now; it suits me fine.

Q. Has the Splitdorf Electrical Company of New Jersey ever parted with the right to those Podlesak patents under the assignment made—under the agreement made by the Podlesaks with the Splitdorf and Sumter Electrical Company and under the assignment of the right of the Sumter to the Splitdorf Company?

A. No, sir.

Q. And they at the present time—that is, the Splitdorf Electrical Company—are the sole owners of those rights and have been up to the present?

A. So far as I know; yes, sir.

Q. So far as you know. And the payment of royalties, however, is made to the Sumter Electrical Company of Illinois?

A. Yes, sir.

Q. When did the Sumter Electrical Company of Illinois become entitled to the payment of those royalties?

A. I don't know.

Q. Ever since the date of the assignment to the Splitdorf Company on September 8, 1915?

A. It was not in existence then.

Q. When it first came into existence did it then have the right to collect those royalties?

A. I don't know. The royalties were paid to the Splittorf Electrical Company of Illinois and remitted to them.

Q. And then by them remitted to the Sumter?

A. Well, I don't know whether you would call it the royalties or not. I don't understand what you are getting at; but the amount of money was later credited to the account of the Sumter Electrical Company.

Q. The Sumter of Illinois?

A. Yes, sir.

Q. Has the Sumter Electrical Company any investment in these patents?

A. No, sir.

Q. Never put a dollar in?

A. Well, I don't know how to answer that. I don't know whether we have or we have not.

Q. Well, you are familiar with the affairs of the Sumter Electrical Company?

A. Yes, sir.

Q. What are the facts with reference to it? State it fully and frankly, and then the Court can judge.

A. Well, that is what I say—I don't know whether the Sumter Electrical Company of Illinois has as an investment, 365 but the Sumter Electrical Company of Illinois have paid the Podlesaks, as I stated a while ago, some of the payments due them, and the Sumter Electrical Company of Illinois have paid some of the attorney's fees, of which there are a great many.

Q. Have you ever paid any attorney's fees to Mr. Thompson, of the firm of Thompson, Myers & Kearney of Racine, who are attorneys in this case for the relator, Mr. Emil Podlesak?

A. He is not our attorney, is he?

Q. No, I didn't state that he was.

A. Well, we have never paid Mr. Thompson or that firm anything. The only attorneys we have ever paid are Gann & Peaks and Mr. Bulkley.

Q. Is the Sumter Electrical Company of Illinois in litigation with the Webster Electric Company?

A. What?

Q. In litigation in any action pending with the Webster Electric Company?

A. The Sumter Electrical Company?

Q. Yes, of Illinois?

A. I don't think they are.

Q. Then why are you paying these attorney's fees?

A. Well, I don't know that I can explain that. It just happens that way.

Q. Somebody has told you to do it?

A. Well, yes, we have been told to.

Q. Who told you?

A. Well, this account—this matter was turned over to 366 the Sumter Electrical Company by the Splitdorf Company at Newark, that is, the New Jersey corporation; but I don't know that the matter is in just as well defined shape as it ought to be.

Q. But you are paying whatever expenses are certified to you to pay, whatever it is, whether it is attorney's fees or anything else?

A. Yes, sir.

Q. And if it is necessary for you to become posted as to the customers of the Webster Electric Company in any way, and any fee is necessary to be paid to accomplish that purpose, it is for your company to pay it?

A. No, sir; under no circumstances whatever am I, in the first place, interested in who are the customers of the Webster Company; and under no circumstances would the Splitdorf Electrical Company pay anybody to acquire that information for them because they don't need it. I have no interest whatever in the customers of the Webster Electric Company, excepting that they are paying them for magnetos and we are getting the royalties.

Q. As a matter of fact you are not getting royalties paid to the Sumter Electrical Company by the Webster Company, but you are getting them as a credit on your account to pay whatever you disburse in this litigation over the Podlesak patents?

A. No, sir; that don't have anything to do with what we disburse.

Q. But you said a moment ago that it did, didn't you?

367 A. No, I didn't say it had anything to do with what we disbursed. We might pay out twice the amount that the Splitdorf would collect or turn over to us as having been received from the Webster Electric Company for royalties.

Q. Do you get all the royalties that the Webster Company pay to the Splitdorf Company; and the Splitdorf, does it turn over to you all of such royalties without reference to what

the Sumter Electrical Company of Illinois pay in the form of expenses?

A. They do not ask us any questions about that. It is all shown on our record, and I suppose we have gotten all of the royalties that have been paid.

Q. Well, you know whether you have or not, don't you?

A. No, I don't know it, but I think we have.

Q. Well, you would know if you had not, wouldn't you?

A. No, I would not know that.

Q. Well, they turn over to you a certain amount of money—

A. Yes, sir.

Q. —without respect to what money you pay—

A. Yes, sir.

Q. —in expenses over this litigation?

A. Exactly so.

Q. And that money that they give to you to put on the other side of the account is supposed to be, so far as you know, all the royalties that the Webster Company are paying to the Spltdorf Company on account of these Podlesak agreements?

A. That is another way to ask me the same question, 368 and I can only answer it as I did before.

Q. Well, answer it now.

A. I said I did not know whether we did get them all or not, but I think we do.

Q. Then whatever the expenses are of the litigation of any name or nature, you will be the paymaster?

A. I don't know that even.

Q. Well, in the past you have paid them?

A. In the past I have paid them, yes.

Q. And there hasn't anything gotten by; if there was any expense of that kind it would come to you; it would not go to the Spltdorf, would it?

A. I don't know how those accounts have been rendered.

Q. You don't know what?

A. I don't know how those accounts have been rendered.

Q. You would not act blindly in the matter; you would be informed with reference to that account, wouldn't you?

A. Yes.

Q. What do you call the account—Podlesak litigation account?

A. Webster-Podlesak litigation.

Q. And on one side of it, whatever the disbursements are—

A. No, I don't think it is handled that way, but I don't know. I will be very glad to show you if you will come to my office.

Q. I wish you would find out and report again to-morrow morning with reference to that.

A. All right, sir.

369 Q. Now, this method of disbursement by you, with reference to this litigation,—that is, by your company with reference to this litigation,—and the receipt of the royalties from the Splitdorf people to compensate your company for these disbursements are not made by virtue of any agreement, written or otherwise?

A. No.

Q. It is just one of those things that happen?

A. It just happened, yes.

Q. And you expect to take care of the litigation?

A. I don't know.

Q. But you have?

A. I have; yes, sir.

Q. And you expect to get royalties against those disbursements?

A. We hope to.

Q. Well, you have?

A. We have most of them—so far as I know we have.

Whereupon the hearing was adjourned to May 14, 1917, at 10:00 o'clock in the morning.

370 May 24, 1917, 10:00 o'clock A. M.

Parties met pursuant to adjournment before said Commissioner.

Present:

Mr. Wright, Mr. Simmons and Mr. Secord representing certain parties as before.

FREDERICK C. MANNING, having resumed the witness stand, was further interrogated by Mr. Wright, and testified as follows:

Q. Directing your attention to the correspondence which I requested you to produce at this time—did you find it?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir.

(Whereupon the witness handed paper to Mr. Wright.)

Mr. Wright: In response to this request, witness produces carbon copy of a letter dated August 10, 1915, which begins "H. R. V. Patent Matters" but without signature; the letters "FCM" being printed at the bottom.

Q. Is that the only letter that you could find, Mr. Manning, with reference to this matter?

A. Yes, sir.

Q. Is "H. R. V." Mr. VanDeventer?

A. Yes, sir.

Q. And did you sign the original, of which this a carbon copy, and send it off to him?

371 A. I don't remember, but I am quite sure I did.

Q. The fact of "FCM" there below indicates to you that you must have signed it?

A. Yes, sir.

Q. Did you get this from the regular file you used, in the proper place as correspondence, which actually passed between you and Mr. VanDeventer?

A. Yes, sir.

Q. So that the records of your office disclose the fact that in due course of business the original, of which this is a carbon copy, was despatched to VanDeventer and signed by you at the date indicated?

A. Yes, sir.

Q. Did you get a reply from Mr. VanDeventer?

A. I could not find any. I recall that when I wrote that letter, since reading it, that I went away, as it states, and when I got back off of that western trip I am under the impression that there was a telegram from VanDeventer, but I was unable to locate the telegram, saying that he and Mr. Clement would be out here, and I think they came on the 19th of August.

Q. And that this meeting that you have referred to in your testimony took place then on the 19th of August?

A. Yes, or whenever they arrived.

Q. Was the option on that day when they arrived—

A. The day following, as well as I remember; yes, sir.

Q. Have you a copy of that option?

A. No, sir.

Q. What became of it?

A. I could not tell you.

Q. Did you turn it over to counsel representing the company?

372 A. Yes, the attorneys, Mr. VanDeventer and Mr. Clement, had it so far as I know.

Q. You were to also look at your books and supply some information. Did you do it?

A. Yes, sir. You asked me the amount that we paid to the Podlesaks, and I found it to be \$10,000.

Q. And the prior \$25,000 had been paid by the Splitdorf people?

A. The Splitdorf Electrical Company.

Q. The Splitdorf Electrical Company?

A. Yes, sir.

Q. In the way you have described? But this ten thousand was paid by the check of the Sumter Electrical Company of Illinois?

A. Yes, sir.

Q. By its check?

A. So far as I remember. I didn't verify that but—

Q. But it appears on the ledger account, does it?

A. Yes, sir.

Q. How is that account headed?

A. It is headed "Patents" and that item is just charged under Patents.

Q. Any other items charged besides that ten thousand item?

A. Yes, items covering litigation fees and things of that kind; just one account.

Q. And does it say to whom those litigation fees have been paid?

A. I presume so. I didn't notice that detail, but I know the records will show that clearly.

Q. So that you can show every dollar that has been
373 spent by the Sumter Electrical Company of Illinois from this account, and running it down to the journal from the ledger?

A. Oh, there would be no trouble to establish to whom any moneys were paid.

Q. And on the other side of the account are credited against these disbursements the royalties which the Webster Electric Company has paid under these Podlesak contracts?

A. The amount of money as received from the Splitdorf Electrical Company to be credited to that account.

Q. Which represents the total amount of royalties received on account of the Podlesak patents?

A. So far as I know, it does. I did not verify that.

Mr. Wright: I will ask to have this carbon copy of the letter referred to identified as a defendant's exhibit.

(The document referred to was marked for identification as Defendants Exhibit 6 with the initials of the Commissioner.)

Mr. Wright: I now offer the same in evidence and read the same into the record as follows:

"H. R. V.

August 10, 1915.

Patent Matters.

Dear Van:—Although I am terribly rushed today trying to get things in shape to leave for Nebraska tonight, H. J. Podlesak dropped in and gave me a chance to find out what he knew about Webster's latest move. H. J. brought in his 374 new oscillator to show me. He had just come in from

Champaign Illinois where they have been holding a tractor meet, and said one of the Webster agents had told him he understood there was a deal on between Webster and Sumter and that Webster was going to take over Sumter, or vice versa. Someone had also told him that Williams, Brown, Mr. Webster and a Mr. Becker, the latter a Chicago banker, were all in New York where an important conference is being held, or was held last week with the Sumter interests.

"I asked H. J. what he knew of the patent Webster Company is claiming as anti-dating the Dixie. He says it is the old Varley idea which has been modified to some extent by the original Webster Company's engineer, one Milton, the exploits of whom nearly wrecked the old Webster Mfg. Co. This fellow, Milton, he says is the chap who got him (H. J. and his brothe Emil) into the Webster organization because of Milton's infringement of the Podlesak patents, the matter having been finally adjusted by Podlesak giving the Webster people a license, their royalties to be not less than \$5,000 per year. This year it will run to \$12,000 he says.

"It appears that Milton had some agreement with the original company (Webster) whereby if they sold out he was to be paid \$50,000. This was compromised to half the amount and that the present Webster Co. had to pay off this \$25,000.

H. J. claims that the old company's experience with Milton's high tension machine cost them many thousand dollars and that if they have any idea of reviving this machine it will soon break the present company.

"He says Lynn Williams evidently thinks some of the claims of this patent may read on the Dixie, but that he does not think Williams has a very broad idea of the previous history of machines of this Varley type. Podlesak is evidently very well informed as to the similarly constructed machines resembling the Dixie, and I believe it may be a good idea for you or Clement to have a talk with him, as he can tell you a great deal of the history of this Milton-Webster patent, his suggestions to Milton, etc., etc. He said he had just scrapped one of these old machines a few days ago.

"It appears that Milton went from the old Webster Co., to the Remy people, where he did more experimenting with machines of the Varley principle. Soon after he married a woman of some means and for the past year or so has been living in Detroit where he has been developing some other devices, and recently has written Emil Podlesak offering him a proposition to come with him and commercialize his new scheme. I neglected to ask Podlesak what the new scheme is.

"I think I have scared H. J. pretty well out of the idea of manufacturing his own new machine, but from what I could get out of him today, it appears he has the right under his agreement with the Webster Co. to manufacture any of 376 the Podlesak magneto outfits himself, or to sell his patent with this right to manufacture and sell without interference from the Webster Electrical Co. Brown would probably dispute this, but he says his contracts with the Webster Co. will make clear his rights as stated in the premises. Now, if Brown (the Webster people) gets too obstreperous, and if the bad feelings between Brown and Podlesak continues to brew as at present, I think H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business, and with their line and plug-oscillator, we sure would be in shape to command the field. I don't think Podlesak would expect anything like royalty he is collecting from the Webster Co., and besides this Brown is getting 5% on the gross sales, besides his salary.

"It is pretty tough on me, with these matters coming up and without my knowing anything of what has been going on down in New York, beyond what you wrote me the other day, so I hope you will advise me fully in the premises. I certainly wish you and Mr. Clement would get out here together as I believe we could have a very interesting "round" with the Podlesaks.

"Hope you can get some sense out of the above, all of which I have run off in a hurry and on an empty stomach too, as haven't had time to get out to lunch today.

Hastily,

FCM.KW.#40."

377 Q. You want that back, do you?

A. I would like to have it back for the files; yes, sir.

Mr. Wright: It is returned to the witness with the request that the same be carefully preserved in the records of the company at that place from which it was taken.

Q. Now, directing your attention to this question at the hotel, the option was prepared at that meeting by the attorney for the company, the option to you?

A. Yes, sir; by Mr. VanDeventer and Mr. Clement.

Q. And presented to the Podlesaks and signed by them then and there?

A. Yes, sir.

Q. How long a time were you and Mr. VanDeventer and Mr. Clement in consultation before the Podlesaks came in?

A. I don't remember.

Q. Was it over an hour or was it ten minutes—was it a short or a long time?

A. As well as I remember, Mr. Henry Podlesak was at that conference within a very short time after these gentlemen arrived.

Q. And this was the first time that you saw these gentlemen after they arrived, was in this room just prior to the time that Mr. Podlesak arrived?

A. I don't remember just where I met them, in the room or in the lobby, or whether they came to my office even. It has been about two years ago, and I can't state definitely those details, but I remember distinctly that very soon
378 after I saw them Mr. Podlesak also came in, as they were very anxious to get in touch with him.

Q. And did he bring his brother with him?

A. No, sir.

Q. Then how was it signed, if his brother was not with him, by his brother?

A. Well, you are now referring to the first day that they came here, or immediately when they arrived. The brother, as well as I remember, did not enter into this conference until the next day.

Q. Well, then, the option was not signed until the next day?

A. No, sir; the option was signed the day after Mr. VanDeventer and Mr. Clement arrived, as well as I remember, which I think was the first day that Mr. Podlesak, the brother of Henry—Emil I believe his name is—came into the conference.

Q. Well, then, was the option prepared ready to be signed when the two brothers came in?

A. Oh, no, sir; there was considerable discussion on the subject before any option, because that was altogether the result of matters that had developed at this conference.

Q. How long was the conference after the brothers came in, after the two Podlesak brothers came in, how long did it last?

A. As well as I remember, it was pretty much all of the next day. I think Mr. Emil Podlesak came in near noon, as well as I remember.

Q. Then they did not come together?

A. No, sir.

379 Q. Let us understand that: After these two gentlemen had come up, after these two gentlemen had met you in the room of the hotel on the first occasion and you had talked over these matters at short length, Henry Podlesak came in—is that true?

A. I have just stated that I did not remember any of those details at all. I simply remember that when Mr. VanDeventer and Mr. Clement, these attorneys, came here, that they asked to get in touch with Mr. Henry Podlesak, and I don't remember just when he came in, but I know it was soon after they arrived in Chicago, and then the following day Mr. Emil Podlesak came in; but I don't think that Mr. Emil Podlesak was seen at all the first day.

Q. Now, how long did you and Henry and Mr. Clement and Mr. VanDeventer talk about these things the first day?

A. I don't remember, but I presume most of the morning or afternoon. I can't recall whether it was the whole day. I was just trying to think whether we went to lunch together or anything like that, but I don't recall those details.

Q. But you do mean to say that there was an extended conference after Henry had appeared on the scene?

A. Oh, yes, they had a great deal to talk to him about in connection with the Milton-Varley patent as referred to in that letter there.

Q. Anything else?

380 A. And these Podlesak patents and the Webster contracts and matters of that kind.

Q. So that everything was very carefully and thoroughly discussed between those two gentlemen, yourself and Mr. Henry Podlesak on that occasion?

A. I don't think I had very much to do with the discussion at all. As well as I remember, that was handled entirely by the attorneys and Mr. Podlesak.

Q. But there was an extended conference at which these matters were all talked over, whatever they were?

A. Well, I have just explained the talk that we together—

Q. Is that true or not?

A. I have just explained the talk that we had together.

Q. Well, they were talking all the time about this; they didn't have anything else to talk about, did they?

A. I could not tell you that, sir.

Q. Well, you were there?

A. Yes, sir.

Q. And then Henry Podlesak went away with a promise to bring his brother, did he?

A. I presume so.

Q. Were you present at the next meeting?

A. Yes, sir.

Q. When did that take place?

A. I have just stated, as well as I remember, it was the next morning or afternoon.

Q. In that room, the same place?

A. I think it was in the same place; yes, sir.

Q. And then the two Podlesaks turned up together?

A. I don't remember whether they came in together or not, sir.

381 Q. How long were you there with those two gentlemen before either Henry or Emil came in?

A. I don't remember.

Q. But you do remember that there was another long conference?

A. Yes, sir; I have just said there were these conferences those two days.

Q. Yes, but now I am directing your attention to the second conference at which Emil was present. How long did that conference take place?

A. Well, I have also stated that it lasted during the better part of the day, but I don't remember whether it was all of the forenoon and all of the afternoon, or any of those details.

Q. Well, everything was considered with reference to the purchase of those patents that you could think of at this second meeting?

A. The whole matter was—

Q. Carefully considered?

A. Was disposed of, I might say, at that meeting, as that was the only meeting that was had on this subject, was when Mr. VanDeventer and Mr. Clement were here and took those matters up with Mr. Henry Podlesak, and then with the two brothers, which resulted in the option that was given in my name.

Q. And at this second meeting the option was prepared?

A. Yes, sir.

Q. And executed by the two brothers?

A. Yes, sir.

Mr. Wright: I wish you would go back and read. I think he made a mistake. I think he meant "meetings" when he said "meeting."

(By request of counsel the evidence of the witness as referred to was read by the Commissioner.)

The Witness: That is exactly as I remember it.

Q. If you will omit "as I have said before," those superfluous remarks, I will now direct your attention to the fact that there were two meetings, weren't there?

A. Yes, sir; these gentlemen were here on the two days.

Q. Were there two meetings at the hotel room?

A. There were the two meetings, as I have just stated—

Q. Will you please leave that out? It is entirely unnecessary for you to say "as I have just stated." I want a clear, consecutive statement, and you have not given it yet as I understand the record.

A. I am trying to understand what you want to know, and just as soon as I do, intelligently, I will try to tell you the facts as I know them.

Q. If you will stop "trying" and really "understand" we will get along faster.

Mr. Wright: Read the question, Mr. Stephens.

(The question referred to was read by the Commissioner as follows:)

"Q. Were there two meetings at the hotel room?"

A. There was the conference of the first day between Mr. Henry Podlesak and the attorneys and myself, and the conference at the second day between the same parties and also Mr. Emil Podlesak.

Q. At which Henry Podlesak was present?

A. By the same parties, I have said.

Q. Now I ask you if it was carefully considered and you said it was disposed of. When you disposed of it you did carefully consider it, didn't you?

A. Well, I don't know just what you mean by being carefully considered. The matter was discussed there to the extent of securing an option from the Podlesak brothers, as I have referred to.

Q. Well, I mean by "carefully," was everything discussed in reference to what you were getting in that option to buy those contracts?

A. That is a matter that was handled entirely by the attorneys and I didn't pay any attention to those details at all.

Q. Don't you know what was said there with reference to buying those contracts, as to their contents?

A. I can tell you in a general way that, as I understood it, the Podlesaks had some good patents to sell which our attorneys decided they might want to buy.

Q. Did they say anything about the royalties?

A. I presume those matters were discussed, as disclosed by the agreements with the Webster Company which, as 384 I understood it, were also considered.

Q. Why do you say "presume"? Do you know of your own knowledge?

A. Well, I don't remember those details, Mr. Wright.

Q. Do you mean to tell me that you don't know of your own knowledge whether the question of royalty was discussed there or not?

A. Of course, it was discussed, as I stated.

Q. Why do you say that you presume they were discussed?

A. Because I prefer to say presume.

Q. Then you mean that you don't know in the first place whether the question of royalties was discussed or not?

A. I don't know to what extent they were discussed. They were mentioned in those conversations. Now I don't know how much that question of royalties concerned our attorneys, and I am not competent to answer those questions and go on record here as saying that this or that is a matter of fact. I can only tell you what I remember regarding these circumstances.

Q. Did you or did you not discuss anything about royalties at either of those two meetings?

A. I don't think that I personally discussed anything about the royalties.

Q. Did the contracts disclose how much royalties they were paying at that time?

A. They did.

Q. What contracts did you have before you which disclosed this?

A. I did not personally read the contracts, but I heard them discussed, and they were the contracts existing between the Podlesak brothers and the Webster Electric Company.

Q. The two contracts dated September 4, 1914?

A. I don't remember anything about the dates.

Q. Were there more than two contracts there?

A. I don't remember.

Q. You did not examine to see what they did disclose?

A. No, sir; I didn't.

Q. You don't know whether they disclosed in dollars what royalty was being paid at that time?

A. No, sir; the matter was being handled entirely by these attorneys, and I didn't pay any attention to it.

Q. Now, there was the right to make a unitary plug and bracket under those contracts, wasn't there?

A. I don't know what they covered.

Q. You did not examine them to see whether the Podlesak patents covered the right to make a unitary plug and bracket?

A. I have just stated that the—

Q. If you will please leave out the words "I have just stated" we will save a lot of good ink and paper here and save your time incidentally. Now answer that question.

A. What is the question, Mr. Attorney?

Q. (Read by the Commissioner)

A. No, sir; I did not.

Q. Did you examine them to see whether they covered the right to manufacture the tri-polar device?

A. I personally did not examine them to discover anything.

386 Q. Were the patents there—did Henry Podlesak bring in the patents?

A. I don't remember.

Q. You said at the last examination that you were getting an option for a contract that would give you the right to go into the same field that the Webster people were in with the same device of a unitary plug and bracket. Now I wish

you would tell me just what your idea was with reference to that field that you were to go into. What field was it?

A. The gas engine field.

Q. The manufacture and sale of the same devices—to manufacture devices that would do the same work as the Webster magnetos would do?

A. Well, we were already manufacturing a device in the plugoscillator, VanDeventer plugoscillator, to do the same work; but I understood that these patents of the Podlesaks would give the additional right to manufacture the same equipment as the so-called Webster-Podlesak outfit, with the exception of the tri-polar magneto.

Q. Now, you didn't want to go into competition with the Webster people; you had your own customers and your own field that you wanted to occupy, didn't you?

A. We did before we acquired the Podlesak patents.

Q. But after you acquired the Podlesak patents how did your intentions change with reference to the field that you proposed to occupy or endeavor to occupy?

387 A. Well, we were collecting royalties then from business that the Webster Company were supplying in that field.

Q. And you did not want to interfere with those royalties?

A. No, sir.

Q. You were perfectly satisfied to rather help to increase the amount of the royalties rather than to decrease them?

A. Yes, sir; we would rather see them increased than decreased, of course, but we wanted to be in a position to handle any of that business that we may see fit to.

Q. Now, you bought also the right to use the name "Podlesak," didn't you?

A. I don't know, sir.

Q. You did not examine the contracts to see whether they had the right to use the name "Podlesak" in them or not?

A. I don't think so.

Q. You didn't care whether the name "Podlesak" was part of the right acquired under those contracts?

A. No, sir.

Q. If the contract provided that you were under obligation to use it you would prefer not to?

A. No, if we used the Podlesak device I would want to use it.

Q. I see, but if you did put your name on the product then you would—with the device marked "Podlesak" that

would not in any way in your intent interfere with the business of the Webster people?

A. No. I did not attach any importance to the name "Podlesak" at all.

388 Q. Why would you prefer to use it then? You said a moment ago that you would.

A. Because I would want the distinction clearly known between the VanDeventer machine and the Podlesak machine, and for a certain class of service we would get better results from the VanDeventer machine.

Q. Do you put VanDeventer's name on your plugoscillators?

A. No, sir.

Q. Now, when you took this option you were not taking it for yourself, I think you said?

A. No, sir.

Q. You said you were not taking it for yourself?

A. No, sir.

Q. You were taking it for those parties for whom you were working, whether it was the Sumter or whether it was the Splittdorf?

A. Yes, sir.

Q. And whatever rights you got under the option, when the option was exercised they would have the right to exercise it?

A. Yes, sir.

Q. And you so understood at the time that you took it, did you? You nod your head yes. Is that what you mean?

A. Will you state the question again? I was thinking of something else.

Q. (Read by the Commissioner)

A. Yes, sir.

Q. Now, that option when exercised carried the title to certain royalties. You understood that?

A. Yes, sir.

389 Q. And you understood also that for the purpose of finding out what those royalties were, that the contract carried the right to examine the books of the Webster people, didn't you?

A. Yes, sir.

Q. Now, you also understood that you were buying the right to enforce those payments of royalty under those contracts?

A. I presume so. I do not—

Q. Well, if they did not pay the royalties you would have made them pay them, wouldn't you?

A. I certainly would have if I could, if it was my individual matter.

Q. That was what the money was being paid for, was to get hold of those royalties and you were going to buy them; if it was necessary to enforce the payment of the royalties you would enforce that?

A. We of course, would do whatever was necessary to secure all the rights we were entitled to under the purchase of the patents and agreement with the Podlesak brothers, from the Podlesak brothers.

Q. Now, if there was a default in any payment of royalties, why, you would enforce that default if it was necessary, wouldn't you?

A. Yes, sir.

Q. And as a matter of fact, there was a default claimed by Henry Podlesak at the time that this option was made, wasn't there?

A. I think there was; yes, sir.

Q. And as a matter of fact, he did declare a default 390 under that so-called neglect of the company to keep its contract with him; he as a matter of fact, after you had purchased did declare a default, didn't he?

A. Well, I remember there was some talk about something of that kind, but as to just what was done I do not remember, beyond the fact in connection with that matter our attorneys asked me something about whether it would make any difference whether the—I am just trying to think now how the matter came up; but so far as I am concerned I stated that I did not see that it was necessary in view of the fact that they said that by not forcing that payment, or whatever it was, that the matter would be adjusted properly by proper accountants at the disposition of a law suit which is in effect between the Splitdorf Company and the Webster Company.

Q. That is to say, these accountants would examine the books and report to you what was the fact?

A. Yes.

Q. And the royalties due?

A. Yes, that that matter, if there was any error made in the payment of royalties, that, of course, it would be rectified by the Webster Company when any such error might be located.

Q. And your attorneys told you that—or that is what you said to your attorneys?

A. No, I said there was a discussion along those lines.

Q. When was that?

A. That was in the early part of this law suit between the Webster Company and the Splitdorf Electrical 391 Company.

Q. So that there was a talk at that time that there would be necessarily an examination, in the interest of these people who were entitled to the royalties, of the books of the Webster Company?

A. I don't remember the details of that at all. I am just giving you that information as I remember, something about the question of whether the amount of royalties paid had been verified by whatever conditions were provided in the agreement.

Q. Now, while this talk was on, you say it was while these proceedings were pending in the Federal Court here another default was declared by Mr. Podlesak?

A. Well, I don't remember how many defaults it was or anything about it.

Q. Well, he said that he did it under power of attorney from the Splitdorf and Sumter people. Do you know anything about that?

A. Well, if he did, that was a matter I didn't have anything to do with.

Q. It was afterwards withdrawn. Did you know anything about the withdrawal of it?

A. No, I didn't know anything about those patent legal matters.

Q. That is, as you understand it, nothing is to be done in the examination of books of the Webster people with reference to these patents, pending this litigation?

A. So far as the Splitdorf Electrical Company is concerned.

392 Q. And so far as the rights under these patents are concerned?

A. I don't know what other rights there may be or anything about any rights the Podlesak brothers may have. I am only speaking, of course, from the interests that I am associated with.

Q. And the interests that you are associated with refer entirely to these Podlesak patent agreements which those interests have acquired?

A. Yes, sir; since they have become the property of the Splitdorf Electrical Company.

Q. Therefore, any examination of the books of the Webster people for trade purposes, which are not necessarily included in these two agreements in specific terms, as to such examination that you might want or might require—is that what you mean?

A. No, sir; I would not want any information whatever pertaining to trade matters in connection with the Webster books at all.

Q. But as to everything concerning these patents, as to those you are willing to let those stay just exactly as it is until the disposition of the law suit?

A. Why, I have no interest whatever or the company has no interest whatever in the Webster Company's books except to verify the payment of the proper amount of royalties under the contracts that we have acquired.

393 Q. Now, you have told me that you are not entirely familiar with all the things that the attorneys are doing in this matter?

A. Yes, sir.

Q. They might be after something that you don't know anything about, might they not?

A. I don't think they would be because I handle the sales business entirely of the Company, and if there were any trade matters that they would be interested in they naturally would ask me about that.

Q. You are not in close touch with the litigation that the Splitdorf people are conducting; are you, with reference to the Webster patents?

A. No, that matter is being handled by our attorneys, and I only am familiar with it in a general way.

Q. Are you a stockholder of the Splitdorf Company?

A. Yes, sir.

Q. Are you an officer of the Splitdorf?

A. No, sir.

Q. I think you stated you were an agent of the Splitdorf Company, appointed to have process served upon you within this jurisdiction—is that so?

A. I am an agent here; yes, sir—whatever that means.

Q. Now, at this meeting—at either of these two meetings held at the hotel, at which you were present, was there anything said as to the right of the Podlesaks to manufacture any of these devices as a personal right to them alone, which

they could not sell and assign to anybody—or assign to
394 anybody?

A. Not as I remember. As I understood it, that was a right which would be assignable with the patents.

Q. And the question as to whether the Webster Company might claim under that contract, that it was a right personal to the Podlesaks, that question did not come up at either of those meetings?

A. I don't remember that detail.

Q. Well, do you call that a detail?

A. Well, that matter. I don't know that the matter was discussed.

Q. Well, it was the smallest thing that you were considering about the whole thing, as to whether anything of that kind could happen, whether there could be a personal right of the two Podlesaks to make, use and sell any of those devices?

A. All I remember is that the matter was being considered there, and the purchase of the patents and contracts would convey to the Splitdorf and Sumter Companies the right to manufacture those devices except this particular machine with a tri-polar magneto, which was explained to me as a magneto that the Webster Company had an exclusive license under.

Q. Now, one question as to that: If you had declared a default, why, it would have put the Websters out of business as to the manufacture of the tri-polar device, wouldn't it?

A. I don't know anything about that, sir.

Q. Well, if you declared a default, or anybody should,
395 anybody who took that option should declare a default as against the Webster Company on the right to make, use and sell exclusively the tri-polar device, they could not make it any more, could they?

A. I don't remember anything about that, Mr. Wright.

Q. Well, you know as a matter of fact they could not do so; you would have a right to do it, wouldn't you, or the people who bought that option, that bought the right?

A. Would have bought the right to do what?

Q. To make the tri-polar magneto?

A. That the Sumter would have the right?

Q. Whoever owned the patent, whoever took over the option from you would own it?

A. I know the matter was considered as very unlikely because I know at no time did the Sumter Company ever

evinced any interest in the manufacture of the tri-polar magnet.

Q. Now, get the question. If there was a default—you mean manufacture or sale, do you?

A. Manufacture or sell.

Q. Now, if the people who took over your option enforced a default against the Webster Company they would not have the right then to manufacture the tri-polar device and your people would— isn't that true?

A. (No response)

Q. That is a trifle too deep for you?

A. Yes, it is.

396 Mr. Wright: Read it to him.

Q. (Read by the Commissioner)

Mr. Wright: I mean the Webster Company would.

A. I don't know.

Q. Don't you know what you were getting an option for?

A. My attorneys did.

Q. But you did not interest yourself?

A. Not especially.

Q. And you didn't notice whether there was any discussion as to the personal right to the Podlesak—and they were your attorneys then, weren't they; they were representing you in getting this option?

A. They were the attorneys; they were the attorneys of the Splittorf and the Sumter Companies.

Q. Your attorneys would understand that you were acting for them?

A. I can't say that they were my attorneys. They drew this option in my name, and it was given, the option was given in my name. You know how attorneys do.

Q. Then you did not claim any interest in this option at all; you were acting for somebody else?

A. Why, as I stated before—

Q. Just leave that out. Yes or no—you were acting for somebody else?

A. For somebody else; yes, sir.

Q. And these attorneys were the attorneys for the people for whom you were acting?

A. Yes, sir.

Mr. Wright: All right, now go back to that question.

397 (The question referred to was read by the Commissioner.)

Q. You don't know then whether there was any discussion

as to the personal right, or you don't remember whether there was any discussion as to the personal right of the Podlesaks to make, use and sell the unitary plug and bracket—

A. No, sir.

Q. —or any of the devices covered by any of those contracts?

A. No, sir; those were matters that were being considered by the attorneys, and I don't remember the details.

Q. Was there any suggestion that it might be claimed by the Webster people that the rights to the Podlesak brothers to make, use and sell the unitary plug and bracket was a personal right to them, that is, to the Podlesaks?

A. I don't think it was at that time.

Q. The lawyers in examining these two contracts, which you say were before them, did not consider that?

A. I don't remember that they did.

Q. Now, do you know of the Union Foundry & Machine Company of Ottawa, Kansas?

A. Yes, sir.

Q. Do you know that they are customers of the Webster Electric Company?

A. I think they are.

Q. And use their devices on their engines?

A. Yes, sir; they have also been customers of ours for several years.

Q. They are using your devices as well as the Webster devices?

398 A. Yes, sir.

Q. They are using the Webster devices at the present time?

A. I don't know.

Q. Were the Union Foundry & Machine Company using the Webster devices along in November and December, 1916?

A. I could not tell you. I don't remember.

Q. You knew they were using yours?

A. Yes, sir.

Q. Well, you ought to know whether they were using yours entirely, or whether they were using yours partially and some other concerns. You were sales agent?

A. Yes, sir; but I am not familiar with the details. I can very easily find that out, I suppose, but I don't remember whether they were using the Webster at the same time they were using ours, or not.

Q. Well, were they using yours on all their machines?

A. I cannot tell you that. I don't think they are.

Q. If you don't think they are, then you ought to inform yourself about it, if you are in the field and not trying to interfere with the Webster people—isn't that so?

A. I don't know as I am trying especially not to interfere with the Webster people.

Q. I thought you said you didn't want to interfere with the Webster people because you wanted to increase your royalties.

A. We do not make it our business to interfere with the Webster people, but I don't remember in this particular 399 case whether they were customers of the Webster Company or not.

Q. You would not take the pains to find out whether they were or not?

A. No, sir; but if they were using the Webster equipment and wanted to buy ours, I would sell them if they wanted to buy our equipment.

Q. That would interfere with your royalties?

A. I can't help that. That is what I would do.

Q. You would do the same with the Demster Mill & Manufacturing Company of Beatrice, Nebraska, if you found out that they were using the Webster Company apparatus and wanted yours, you would go and sell it to them?

A. If they preferred ours and wanted it, I would certainly sell it to them.

Q. Then you would go into competition with those two companies as against the Webster people and displace the Webster devices there if you possibly could.

Q. Would your men go ahead and try to do that?

A. Not in that way; no, sir.

Q. Have you a salesman by the name of Bennett?

A. Yes, sir.

Q. Did he go to those two companies and undertake to solicit business for your apparatus?

A. He probably did. That is what he is paid for.

Q. And you would approve of his going to those two particular companies and trying to displace the Webster apparatus that they were using?

400 A. Well, sir, I would tell him that it was all right for him to get all the business the customers wanted of the equipment that we were in a position to furnish.

Q. Whether they had Webster stuff on their engines and it displaced that or not?

A. Yes, sir.

Q. And give him a line of talk to displace the Webster?

A. I don't recall that any of—

Q. Well, I say, you would approve of it?

A. I would not hesitate to do that.

Q. You would not hesitate to do that?

A. No.

Q. Do you know the Stover Engine Company?

A. Yes, sir.

Q. Did you substitute your devices on their machines and displace the Webster devices?

A. I don't know.

Q. And that same is true of the Stover Engine Company—did you not sell them your devices and displace the Webster—you would not hesitate to do it?

A. Not if they wanted to buy them, sir.

Q. Well, as to the Emerson-Brantingham Company of Rockford, Illinois, did one of your salesmen sell them any of your goods and displace the Webster apparatus?

A. I don't know, sir. We have recently sold them some rotary magnetos; but, Mr. Attorney, I would not hesitate to sell any concern in the country that wanted to buy any of our stuff, whether the Webster Electric Company were selling them or not. But the Webster Electric Company, so far 401 as their selling them, and if they are not buying the equipment from us, I would rather see them buy it from the Webster Electric Company, because then we are getting a royalty out of the business that the Webster Electric Company does with them.

Q. Don't you know that the Emerson-Brantingham Company were handling the Webster devices exclusively, and didn't your Mr. Kaiser go over there to get them to take some of your devices and displace the Webster?

A. I don't know what they displaced or anything of the kind.

Q. In connection with your statement, that you would rather see the Webster machines in use to increase the royalties, it is also true that you would not hesitate to decrease the royalties if thereby you could get business for your company?

A. If the customer prefers to do business with us; and rather than have the customer buy the equipment from some competitor, where neither the Webster nor ourselves are being benefitted.

Q. But there was no other competitor in either of these cases. What I want to have you understand is that the question is directed clearly to this point: that where the Webster Company is supplying, you propose to go in and compete with the Webster Company and get your devices in place of the Webster?

A. If the customer wants our equipment I would sell 402 it to him if I could.

Q. And you would solicit it and you would urge him to do it?

A. Why, I would not tell him not to.

Q. You would urge him; you would send a salesman out and have him give him a line of talk?

A. I haven't issued any special instructions along those lines, to go out and get business that the Webster Company is handling; in fact, I have told the salesmen to let that business alone as much as possible, and take care of the other in which we are more interested in getting.

Q. And when they do not let it alone you approve of their acts?

A. Well, I understand they have a perfect right to do that, and I have not disproved of it. I don't want any of them to do anything they have no right to do.

Q. Now, as a matter of fact, you don't want to sell the tri-polar magneto anyway?

A. No, sir.

Q. Or manufacture it?

A. No, sir.

Q. Or have anything to do with it?

A. No, sir.

Q. You would rather have the Webster people make it and sell it?

A. Yes, sir.

Q. And there never has been a time since these matters came up, and you took that option, that you wanted to sell the tri-polar mageto?

A. No, sir.

Q. Now, do you remember a meeting that was called at Mr. Becker's office to consider this litigation about a 403 year ago?

A. Yes, sir.

Q. Do you remember who called it, or at whose suggestion it took place? Was it at the suggestion of Mr. Peaks?

A. Mr. Peaks or Mr. VanDeventer—I don't remember which.

Q. Who is Mr. Peaks?

A. Mr. Peaks was a member of the firm of Gann & Peaks, attorneys.

Q. For whom?

A. The Splitdorf Electrical Company.

Q. Did Mr. VanDeventer come from South Carolina to attend this meeting?

A. I don't remember that. I don't remember how he happened to be here at all.

Q. But he was here?

A. Yes, sir.

Q. Do you remember who was present at that meeting?

A. Yes, sir.

Q. Who?

A. Mr. Peaks and Mr. VanDeventer and myself.

Q. And Mr. Brown there (indicating)?

A. Yes, sir; Mr. Brown of the Webster Company; Mr. Becker, I believe.

Q. Was Mr. Webster there, T. J. Webster?

A. I don't remember whether he was or not.

Q. Do you remember that you made a proposition that your company, the Sumter Electrical Company of Illinois, was a sales organization?

A. Yes, sir.

Q. And that it would be willing to take—that it desired to take over the sales of the Webster products and let the Webster Company continue in the manufacturing line only?

404 A. No, sir; I did not make that proposition.

Q. Who did make it?

A. I don't know that anybody did.

Q. Was it suggested there?

A. I think it was one of the things suggested; yes, sir.

Q. You don't know who suggested it?

A. I think Mr. VanDeventer made the suggestion.

Q. Did you approve of it?

A. I said that I would consider it, and it was arranged for Mr. Brown to meet me in Chicago to see if we could get together on any practical basis or proposition.

Q. Well, do you remember that Mr. Brown got up and said that in view of certain devious ways and the reputation of the Sumter, that he was not willing for the Sumter Elec-

trical of Illinois to take over the sales of the Webster product and come in touch with their trade, for the reason that their methods of doing business might not agree?

A. I remember that Mr. Brown did agree to meet myself to discuss ways and means if possible to bring about a proposition covering such an arrangement, but Mr. Brown and myself never had any conference on the subject.

Q. Did he say in effect what I have just asked you at that meeting?

A. I don't remember that he did.

Q. What did he say?

A. I don't remember what he said.

Q. Didn't you urge it and discuss such a proposition, which you say Mr. VanDeventer made?

405 A. I don't believe that I could because I never approved of it and heartily disapproved of any such an arrangement, and finally brought the matter to the attention of another one of the organization and it was decided to dismiss it entirely.

Q. Now, didn't the remarks that Mr. Brown made, to the effect which I have quoted, lead you to say—and I want to refresh your memory—didn't such a suggestion from Mr. Brown lead you to say something like this: "Well, Henry Podlesak has painted you fellows—the Podlesaks have painted you fellows with horns to us, and maybe they have painted us with horns to you"?

A. I never made any such statement.

Q. Did you suggest at that meeting that the Podlesaks had made representations of any name or nature to you or to anybody that you represented against the Webster people or Mr. Brown or anybody connected with them?

A. Well, I don't remember anything of the kind. I may have—I can't remember having heard the Podlesaks say anything about them. I would like you to state that again. Let me see if I can recall it.

Mr. Wright: Read it.

Q. (Read by the Commissioner)

A. As far as I remember, I positively made no such statement.

Q. Was anything said by you that you can now recall, that the Podlesaks had made any statements to you unfriendly, 406 threatening or in any way antagonistic to the Webster people or derogatory to them, the Webster people?

A. Well, Henry Podlesak has made some statements which

would indicate that he was not on the best of friendly terms with the Webster Company or Mr. Brown.

Q. Well, what has he said?

A. I don't remember. Just as I stated in that letter there, I see I used the expression that if Mr. Brown and Mr. Podlesak—oh, no, if Mr. Brown was obsterperous—I don't know just what that word means—or if that relationship continued between the Podlesaks and Mr. Brown that he would no doubt be interested in—

Q. In getting in?

A. I was trying to think what the letter states.

Q. The letter will speak for itself. Don't you mean that there was a whole lot of threats made by Henry Podlesak against Brown and against the whole concern up there?

A. Oh, I can't say that there were any threats made. He did talk to me at times about feeling that they were having some trouble there at the Webster plant, and his brother was dismissed, had been thrown out or had retired or something of the kind, and there was not the best of feeling existing, and that that was the reason that they were going into the manufacture of Podlesak plugoscillators.

Q. What did he say about his feeling? He showed a good deal of animosity, didn't he?

407 A. Well, he seems to me to be interested in it, of course, on account of his brother.

Q. Didn't he show a good deal of animosity toward Mr. Brown and the Webster people?

A. Well, I can't say that he showed any particular love for them.

Q. Well, give us an answer. We are entitled to an answer.

A. Well, now, I really am unable to say, Mr. Wright, that he made any threatening remarks to me, but just in casual conversation he would say little things that left me under the impression that I have expressed in that letter to Mr. VanDeventer, but I don't remember anything in particular that he might have said that would be obnoxious.

Q. At this meeting at which Mr. Becker was present, didnt' you and Mr. VanDeventer state that Emil Podlesak was very bitter against Mr. Brown and the Webster Company, and had made a lot of statements to you showing his bitterness?

A. Mr. Wright, I never made any such statement as that.

Q. Did you say or Mr. VanDeventer say that that was why he was going into business, and that was why he wanted to sell out to you and to the Splitdorf and Sumter people?

A. I have just stated that I don't remember of making any—I may have said something, but I don't recall making any remarks like that in that conference, although I do remember that we were very frank there, and possibly something was said to indicate that the Podlesaks had not left us under the impression that they were any too well pleased with their dealings with the Webster Electric Company; but as to these specific statements, I really don't remember. I don't think I had a great deal to say on the occasion of that meeting at all.

Q. Did you know that the Splitdorf and Sumter people made a joint and several answer to the bill of complaint of the Webster people against the two Podlesaks and themselves pending in the District Court of the United States for the Northern District of Illinois, Eastern Division?

A. I know we are having—that the Splitdorf and Sumter Company and the Webster were having and are having a lawsuit; but as to the proceedings in that case I am not competent to express an opinion.

Q. Well, you did attend there?

A. Yes, sir.

Q. And testified once as to service of process?

A. Yes, sir.

Q. At that time you were served with process as an officer of the Sumter Company of South Carolina, and you testified with reference to that service?

A. I remember that I testified in that case, but I don't recall those details.

Q. Well, you tried to defeat the service by testifying that the service was not correct, didn't you?

A. I think there was such—I don't know what suit this is—would you ask me that again, sir? I don't know what you are getting at.

409 Q. (Read by the Commissioner)

A. I don't remember, but I know there was something about some error in the service.

Q. And you testified that that you were an officer of the company, and the service was held good?

A. Well, I testified in accordance with the facts, but I don't remember these details.

Q. Now, did you furnish all the evidence to the attorneys that was necessary to prepare the answer that they filed for the Splitdorf and Sumter Company in that suit?

A. I don't recall that I furnished any of it.

Q. You really don't know anything about this answer then that was put in by the Splitdorf and Sumter Companies?

A. I know that I personally didn't have anything to do with it.

Q. I want to take your mind back again to those two meetings at the hotel, and ask you whether anything was said about any representations which Mr. Webster had ever made to the Sumter Company, that the Podlesaks were owners of these various patents?

A. I don't remember that that matter came up at that time, but I do remember such a reference in connection with the Splitdorf and Webster law suits.

Q. Then prior to the time of you taking the option, it had never been discussed that there was any such letter directed by Mr. Webster to the Sumter Electric Company of South Carolina; it came up long after that?

A. I don't remember anything about that, whether it was before or after.

Q. Then you have absolutely no recollection of anything having been said about it at these two meetings or prior?

A. Absolutely no recollection.

Q. I think you have already testified that you are not familiar with the contents of the bill brought by the Webster Electric Company against the Sumter Electrical Company of South Carolina, which was pending in the Federal Court in South Carolina at the time that you took this option?

A. I don't think I had ever seen any of the record in the case at all.

Q. Then you were not relying upon any statements that were made in that litigation in the bill or in the pleadings at the time that you took this option?

A. I was not relying personally upon any of those things because the matter was being handled entirely by the attorneys.

Q. And it was not discussed at this time, at the time that you took the option?

A. I don't remember that it was.

Q. Then you don't know whether it is true or not, as alleged by the Splitdorf Company, that they were relying upon a letter of Mr. Webster, or the allegations in that bill that I have called your attention to, at the time that this option was taken by you?

411 A. Well, I believe that the answer so stated that they were, but I don't remember.

Q. But there was nothing said, so far as you know, about it at the time that you took the option?

A. I don't—

Q. You don't recall it?

A. I don't recall it those times.

Q. You have no recollection of it?

A. No, sir. That was a matter that was being handled entirely by the attorneys, and I didn't pay any attention to it as it concerned things that I know very little about.

Q. Well, as a matter of fact, you don't seem to be able to tell anything about what did take place at those meetings except that you went there for the purpose of getting this option?

A. No, I didn't go there for the purpose of getting the option at all.

Q. What did you go there for?

A. I went there to be present at a conference with Mr. Clement and Mr. Van Deventer, these attorneys, and Mr. Podlesak, which resulted in the option that we got.

Q. Now, you also understood when you were taking that option that the Podlesaks had to make good on that title to you if you took it up; they had got to make good on all they were selling you, hadn't they?

A. Well, I presume that the lawyers would not consider anything that could not be made good. I don't know anything about those details.

Q. Well, they would have to make some promises of warranty, and they would have to live up to their promises; you understood that?

A. I presume that whatever was necessary to protect the interests of the Splitdorf and Sumter Company was attended to by the attorneys, but as to the details I do not remember.

Q. Well, you would not buy a pig unless you knew the man that was selling it to you owned the pig, would you?

A. I certainly would not.

Q. And you were an officer of this company, and you were there to see as to everything except purely legal matters?

A. No, I was there to listen to that interview, and to see what the attorneys thought was best to be done in the interests of the company.

Q. And what you wanted was the title, of course?

A. What I wanted was what they wanted.

Q. Suppose they had told you that there wasn't any title there, then what?

A. If they had told us there wasn't any title there, I am very sure that we would not have concluded the option; we would have quit the thing.

Q. Then they must have advised you that there was something there that you wanted, or you would not have gone on and advised your company to pay \$70,000, would you?

413 A. I certainly would not. The attorneys satisfied themselves that whatever the Podlesaks were selling they were entitled to, and that they could make proper and legal transfer of their rights in the matter.

Q. And that they would guarantee them?

A. Well, I presume they did. I am not much of an attorney myself, but if I had been drawing the papers or making the deal personally I certainly would have seen to that.

Q. Now, that your people have taken up that option, why, they are going to insist on having the Podlesaks make good on what they sold them, aren't they?

A. I presume so. I presume they have made good.

Q. Well, if they don't make good I presume that you would presume that they would presume that it would be their duty to do it—is that true?

A. It would be their duty to do it.

Q. Well, I don't understand you when you talk about "presuming" and all those things. I am trying to have you answer a question.

A. You are asking me questions about legal matters that are very difficult for me to answer.

Q. No, I am not asking you questions about legal matters. I am asking you a plain business man's question, and that is, if you buy a pig if you expect to get title to it?

A. Yes, sir; I do.

Q. And you expect the fellow that sells you the pig,
414 if he hasn't got the title, you expect that he has got to make good on it, don't you?

A. Yes, sir.

Q. And if there is any question about the title you expect him to come forward and aid you in every form and shape possible to make good on the title to that pig, don't you?

A. Whatever is necessary to deliver what he sold me.

Q. And that is exactly what you understood the lawyers advised you about the Podlesaks in reference to this option?

A. The lawyers didn't advise me anything. They simply attended to that whole transaction and I didn't have any-

thing very much to do with it except that the paper was drawn in my name.

Q. Didn't you think that in taking that option you were getting something?

A. I certainly did.

Q. \$70,000 was going to pass on the strength of it, was it not?

A. Yes, that was the amount.

Q. Then you thought you were getting a title?

A. Yes, sir.

Q. And you thought that these men were under obligation to make good on that title to the extent in their power, didn't you?

A. I understood we have such title.

Q. And you understand that they are doing everything in their power to help you make that title good?

A. Why, we have the patents, and I understand—

Q. Answer the question. Are they or are they not doing everything up to the present time to make good your title?

415 A. They have made good.

Q. If there is anything to be done to make it good they are going to do it, aren't they?

A. Well, they are so far as I know.

Q. And if they are not you are going to make them do it?

A. Well, I would certainly think it would be necessary because we are going to have title to what we have bought.

Q. And you would expect them to fulfill their obligations to help you and aid you in every way possible with reference to the rights that you acquired under these options?

A. We would expect them to do whatever is necessary to complete a legal transaction.

Q. As specified in those contracts here?

A. Well, I presume so.

Q. Why do you say "I presume"?

A. Well, my dear Mr. Attorney, I don't know the legal status of the thing.

Q. My dear witness, you can answer a question without saying "I presume". Don't you know that when you say "I presume"—

A. Then I will tell you, I don't know.

Q. What?

A. I will just say I don't know.

Q. (Read by the Commissioner)

A. Well, I don't understand this question. I consider it a legal question and I will simply answer that I don't know. I don't know what you are driving at.

Q. Then you don't know whether the Podlesaks are 416 to carry out this contract or not with you?

A. They are certainly to carry out any contract with us or any agreement that they entered into with us to carry out, if it has not been carried out. As I understand it, everything has been carried out.

Q. Now, I ask you whether it is not their duty to make good that title that they have conveyed to you.

A. Well, I understand they have made good that title.

Q. Suppose they have not, do you understand that they are under obligation to continue to make good on it, or whether they are not to make good.

A. I don't understand anything about any of these questions you are asking me here, and I can only advise you as above because so far as the titles are concerned I understand that they are the property of the Splitdorf Electrical Company.

Q. If you have any rights under the two contracts which you bought, which you took an option on, which are in any respect unaccomplished or unfulfilled or in controversy, do you mean to say that you don't expect the Podlesaks to aid or assist you with reference thereto?

A. I expect the Podlesaks to do whatever may be necessary to complete their agreement with the Splitdorf Electrical Company, if it has not been completed. So far as I know, the whole matter is complete.

Q. Don't you know that it is in litigation?

A. I know that there is some litigation, but what that 417 litigation covers I could not tell you to save my life.

Q. And there is a question as to whether the Podlesaks have any right whatsoever to make that contract with the Splitdorf or Sumter people carrying out the option?

A. I don't know just what that law suit is about. I have tried to enlighten myself.

Q. Don't you know that the Webster people are attacking your right to make, use and sell these devices as provided in the Podlesak contracts which were taken under option by you?

A. I understand that there is some question of infringement there being considered.

Q. Don't you understand that the Webster Company

claims that the Podlesaks have no right to sell to you the right to make, use and sell under those contracts the devices as provided therein?

A. Yes, I think that is a part of the suit, but I don't understand its various ramifications at all.

Q. Haven't you openly discussed that with the trade, as to the claim of the Websters against your company or the Splitdorf Company?

A. I have discussed it and have stated that we own the Podlesak patents and the contracts under which the Webster Company manufacture the Podlesak magnetos.

Q. And haven't you stated that the Webster Company claim you have no right to purchase them?

A. I have understood that, and I may have stated that.

418 Q. Then if it is necessary for the Podlesaks to assist you or your company in any way to make good this sale don't you expect that they will do it?

A. I am sure they would do it.

Q. Well, don't you consider that it is the duty of the Podlesaks to make good the title that they have conveyed to you, or to your company, which is attacked by the Webster people?

A. If it has not been made good, I am sure they will make good.

Q. That was not the question. Isn't it their duty to cooperate in every way, form and shape to perfect the title to those contracts in you—isn't it their duty?

A. Well, I think it is everybody's duty to—

Q. Isn't it the duty of the Podlesaks?

A. Well, I don't know how to answer your question. I am simply going to say I don't know. I don't know what it is you are trying to bring out here. You are asking me a lot of things that I don't understand, and I am simply going to say, and very conscientiously too, that I don't know.

Q. Aren't there a lot of things you are afraid to understand, Mr. Manning?

A. No, sir; there is nothing at all that I am afraid to understand, Mr. Attorney, and I will tell you anything that I do understand as representing a fact; but you are asking me my opinion here on the subject.

Q. No, I am not.

419 A. You are asking me if I don't think it is the duty of those people to make good.

Q. I am asking you whether when you took this option, upon which afterwards \$70,000 passed, if it was not part of the consideration that the Podlesaks had got to make good on what they were selling you.

A. Well, I have told you that the matter is not handled by me personally at all; it is in the hands of our attorneys, and I am not at all competent to answer these questions as you have put them, and I don't know anything about it.

Q. Weren't you the general manager, vice president, member of the board of directors, and stockholder of the Sumter Electrical Company at that time?

A. No, sir.

Q. What were you?

A. I was vice president and secretary.

Q. A member of the board of directors?

A. Yes, sir.

Q. And a stockholder?

A. Yes, sir.

Q. Who was the general manager?

A. Mr. C. T. Mason.

Q. Did you approve and authorize the payment of \$70,000 to the Podlesaks in this transaction?

A. I did whatever was necessary for me personally to do to make it a proper transaction.

Q. And you mean to tell me that you bought that without really having any opinion at all as to what kind of a title you were getting or anything about it at all; that you were perfectly willing to leave that to somebody else?

A. Well, like most business men, I did what our attorneys told me was the thing for me to do. I had confidence in our attorneys.

Q. And you did not ask your attorneys whether there was any question of or dispute between the Webster people and the Podlesaks as to the title that they were conveying, and upon which \$70,000 passed?

A. Mr. Attorney, I did not ask our attorneys any of those things because they were, very much more familiar with the matter than I was, and I didn't have anything to do with that.

Q. Well, you were not very much concerned about this transaction anyway, were you?

A. Why, yes, I was concerned about it.

Q. You were the man that first brought it to their attention?

A. Yes, I happened to be in conversation with Mr. Podlesak and learned of his attitude in the matter, and in calling the matter to the attention of the attorney or rather Mr. VanDeventer, who was one of the attorneys in the matter, which has just been presented here, they and the Podlesaks got together, which resulted in all of this transaction.

Q. And you were perfectly willing to buy whatever the Podlesaks had. That was the point?

A. I was perfectly willing to buy whatever our attorneys thought we ought to buy, and wanted to buy.

421 Q. But you did not go into particulars of it—you left that entirely to them?

A. It was left to the attorneys, Mr. VanDeventer and Mr. Clement.

Q. Did they discuss in your presence the question of title?

A. I don't remember what they discussed.

Q. The question of who owned these patents did not come up at all there?

A. Well, we discussed that a little while ago in connection with a letter of Mr. Webster, and I stated that I did not recall whether that matter was mentioned in this conference or not.

Q. Just prior to that time the Webster people had got away some of your customers and supplied them Webster tripolar devices, hadn't they?

A. I don't remember.

Q. Where is the principal office of the Splitdorf Electrical Company?

A. Newark, New Jersey.

Q. Who is the president of the company at the present time?

A. John F. Alvord.

Q. Who is the vice president?

A. I can't tell you.

Q. Who are the members of the board of directors?

A. I can't tell you that, sir.

Q. Who is the general manager?

A. C. W. Curtiss.

Q. Where does he reside?

A. At the general office in Newark.

Q. And where does Mr. Alvord reside?

A. In New York City, I think—well, he is there whenever I have seen him, but I don't know what his legal residence is.

422 Q. Is Mr. VanDeventer an employee of the Splitdorf Electrical Company at the present time?

A. Yes, sir; and attorney in their patent matters.

Q. In the United States Patent Office, you mean?

A. I don't know what office. He is their attorney.

Q. And he is a patent attorney?

A. I mean that he is an attorney, but whether or what kind of an attorney—

Q. You don't know whether he is an attorney at law practising law generally, or whether he is only a patent attorney?

A. I think he is what you call a patent attorney.

Q. And he is exclusively in the employ of the Splitdorf Company?

A. No, he handles other cases outside of the Splitdorf.

Q. Where does Mr. Clement reside—is he at this time attorney for the company?

A. No, sir; he resides in Washington. He is not the attorney.

Q. Is Mr. Vandeventer a stockholder of the Splitdorf Company?

A. Yes, sir.

Q. Give me the officers of the Sumter Electrical Company of Illinois.

A. F. C. Manning, president; C. W. Curtiss, vice president; Charles Kratsch, treasurer; Frederick Secord, secretary.

Q. Who is the general manager?

A. Well, sir, there is no one elected to that office. I am manager of the business.

Q. I think you stated that the capital stock of the Sumter Electrical Company of Illinois is \$5,000?

A. Yes, sir.

Q. Do you know who the stockholders are?

A. Yes, sir.

Q. Who are they?

A. C. W. Curtiss.

Q. How many shares?

A. I don't remember; F. C. Manning—

Q. How many shares?

A. One share; and Frederick Secord—

Q. How many shares?

A. Those are the only stockholders I remember.

Q. Do you know how many shares Kratsch has?

A. No, sir.

Q. Or Secord?

A. No, sir.

Q. You are president of the company and sign the stock certificates, and you don't know at all except that you have got one share. Is that what you mean to say?

A. I know that I was given one share of stock; yes, sir.

Q. You don't know anything about that?

A. It was a matter that did not interest me especially because I knew it was being properly handled, and the facts in the case, of course, are all matters of record anyway.

Mr. Wright: That is all.

Subscribed and sworn to before me this day of May, A. D. 1917.

Commissioner.

424 Whereupon the hearing was adjourned to May 14, 1917, at 10:00 o'clock in the morning.

425 PLAINTIFF'S EXHIBIT 82.

426 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Wisconsin.

State of Wisconsin.

Ex Rel. Emil Podlesak,

Plaintiff,

against

Webster Electric Company *Et Al.*,

Defendants.

} Testimony.

Deposition of witness in the above entitled cause, Harry R. Vandeventer, said witness residing in the City and County of Sumter and State of South Carolina, to be used on the trial of the above entitled action, pursuant to the notice hereto attached and returned herewith, taken under the Federal Statutes, Sections 863, 864, 865, before Mark Reynolds, a notary public duly qualified and acting as such under the laws of the State of South Carolina, at his office in Law Range in said City, County and State, beginning on the twenty fourth day of May, 1917, at two o'clock in the afternoon and from

time to time thereafter as in the following transcript thereof set forth.

Appearances:

Arthur B. Wright, appearing in behalf of the defendants, no other appearances being made in behalf of parties.

HARRY R. VANDEVENTER, a witness called in behalf of the defendants herein, residing in the City and County of Sumter, State of South Carolina, pursuant to the notice hereto attached and under the Federal Statutes 863, 864, 865, being duly cautioned and sworn to tell the whole truth and being carefully examined upon oral interrogatories, deposes and says as follows:

427

Examination by Mr. Wright.

Q. I would like to have the records show that the witness appears before the commissioner in response to process duly served. You were served, Mr. Vandeventer, with subpoena of the Federal Court, returnable before the Notary?

A. Yes sir.

Q. You are here in obedience to this subpoena?

A. Yes sir.

Q. What is your name?

A. Harry R. Vandeventer.

Q. Where do you reside?

A. #206 North Church St., Sumter, S. C.

Q. What is your business?

A. General manager of the Sumter Works of the Splitdorf Electric Company, a corporation of New Jersey. I also act as attorney in connection with certain patent matters of that and some other corporations.

Q. Are you a counsellor and attorney at Law?

A. I am not.

Q. You spoke of the Splitdorf Company of New Jersey. Does it own at the present time the works in Sumter, formerly known as the works of the Sumter Electric Company of Sumter?

A. I am informed and believe that it does?

Q. Don't you know.

A. I am not an officer of that company. I have no way of ascertaining whether it does now or not.

Q. In whose employ are you?

A. Splittorf Electrical Co.

Q. So far as you know, the works here are under the charge and direction and claim of ownership of the Splittorf Company of New Jersey?

A. Yes sir.

Q. Who do you take your orders from?

A. Mr. C. W. Curtis.

Q. Who is he?

A. General Manager of Splittorf Electrical Company of New Jersey.

428 Q. Where does he reside?

A. #411 Ridgeway road, South Orange, N. J.

Q. What official connection did you have, if any, with the Sumter Electrical Company of South Carolina?

A. I was treasurer and general manager.

Q. Up to what time?

A. Up to the time of the dissolution of that corporation.

Q. When was that?

A. I will have to refer to the records. I cannot recall off-hand, but I think it was late in 1915, or early in 1916.

Q. Is there any way you can refresh your memory?

A. I said up to the time of the dissolution of that corporation. The dissolution papers were filed February 28th, 1916.

Q. When was the notice of dissolution acted upon by the Board of Directors of that Company, if you know?

A. On February 2nd, 1916, at a stockholders' meeting of the Sumter Electrical Company, at which all of the stock was represented, it was resolved to wind up the said corporation, and as a result of that meeting the petition for dissolution was filed February 28th, 1916.

Q. What was the first action taken with reference to dissolution previous to February 2nd, 1916?

A. I don't recollect, without access to the minute books.

Q. Let me refresh your memory by saying that an advertisement appeared in August 1915, that the Sumter Company was going to go out of business.

A. That would not enable me to state what official action was taken. That matter of dissolution of the corporation was discussed for some time prior to the actual action itself. It was discussed some time prior, in fact.

Q. How long before?

A. Probably six or eight months; possibly as long as a 429 year prior to that; on account of the fact that the Sumter Company contemplated selling its physical assets, and there would be no reason for the continuation of the company after it sold its assets.

Q. When did it sell those assets?

A. Sometime along in July or August, or perhaps later, 1915.

Q. Was it before or after, that you and Mr. Manning, with Mr. Clement met the Podlesak Brothers at the Great Northern Hotel in Chicago?

A. I think that sale took place after that.

Q. At the time of the meeting in Chicago, was the question of the sale of the Sumter Company to the Splitdorf Company in process of negotiation, or had it been made?

A. I am reasonably sure it had not been made. I do not know whether it was in process of negotiation. I don't know at what stage the proceedings were when that meeting in Chicago that you refer to was held.

Q. You remember that meeting?

A. Yes, that took place August 20th, 1915.

Q. Had any negotiations for the sale of the Sumter assets at Sumter, S. C., been made prior to that date?

A. I could not say.

Q. Is there any way you can refresh your memory?

A. Not unless I ask some of those who were engaged in that matter at that time?

Q. Who would you ask?

A. I might ask the Splitdorf Company's Attorney. I am not familiar with the details of that transaction as to dates, because I had very little if any correspondence about that.

Q. You don't mean to say that there were, so far as you know, no negotiations prior to August, 1915.

A. I think there were negotiations prior to that date. I cannot say the exact stage they were in prior to that time.

430 Q. Then these negotiations were being had between Sumter and Splitdorf people at the time of the meeting in August, 1915, at Chicago, when you met the Podlesak brothers?

A. I think so.

Q. You say, you think. You have a positive recollection that that was the fact, have you not?

A. At the time, August 1915, and previous thereto, the Sumter Company wished to dispose of its plant and was in

negotiation with parties with that end in view, and I think that the Splitdorf Company was one of these parties, but as to the exact stage to which the negotiations had reached, I am unable to state.

Q. You are entirely familiar with the process of manufacturing and with the goods that are manufactured at the present time and prior to this time, at the Sumter Works in Sumter, S. C. ever since you have been connected with the company?

A. I am.

Q. I show you a catalogue put out by the Sumter Electrical Company, and it bears the legend, "1915. Sumter Magnetos". It is marked "Exhibit 4", and I ask you whether that is some of the literature of your company and issued by your company?

A. Yes, sir.

Q. I call your attention to three places in this catalogue which I have just shown you and these three places are marked with the initials, F. H. S., being pages 16, and at page 37 that portion of the catalogue denominated "plug oscillator" and on page 38 to a cut called "Figure 1." Now, having directed your attention to these portions of the catalogue, please answer this question as to page 16: Are these the 431 type of oscillating magnetos, so called, now manufactured by you?

A. Yes, sir.

Q. And for how long a time has that type of oscillator as shown on that page been manufactured by you.

A. This general type has been manufactured, I think, since 1913.

Q. Is it called the Vandeventer type?

A. No, sir; and it is not a plug oscillator.

Q. At page 16?

A. Yes, sir.

Q. But it is an oscillating magneto?

A. Yes, sir.

Q. I now call your attention to page 37. The heading is "Plug oscillators", and figure 1 is what?

A. Figure 1 shows the typical outfit as described in the booklet.

Q. That is what you call a plug oscillator and what you call an oscillating magneto, in combination?

A. Yes sir, the combination consists of the magneto make-

and-break ignitor, in combination with the actuating mechanism therefor.

A. And that is what you supply at the present time to Fairbanks, Morse & Co. on their engines?

A. No sir.

Q. You are not supplying them to them?

A. No sir.

Q. What are you supplying?

A. A small rotary magneto, substantially as shown on page 4 of the booklet hereinbefore mentioned.

Q. Are you supplying them with a plug oscillator in connection with any other equipment of any kind; a so-called plug oscillator?

A. Not from these works, and I understood your former question to apply to what was furnished from these works.

Q. Then the device shown by figure 1 is supplied to Fairbanks, Morse & Co., but not from Sumter?

A. Yes sir.

432 Q. And it is assembled in Chicago and supplied by the Sumter Electrical Company of Illinois; is that what you mean?

A. No sir, the history of that device there, figure 1, as shown on page 38 of the booklet is this,—that the magneto proper is manufactured at Sumter and was shipped to Chicago, and the balance of the equipment making up the complete device was manufactured in Chicago, the magneto mounted thereon and the complete device shipped to the Fairbanks Morse Company.

Q. Then the plug oscillator part of the device was made in Chicago?

A. Has been up to the present time.

Q. On August 20th, 1915, when this meeting was had to which I have reference, were the facts as to the device shown at figure 1, the same then as you have described?

A. If we were making them at that time, yes. Perhaps I can save some time in this examination by stating that we have never shipped any of the devices known as the plug oscillator from Sumter to any customers, with the possible exception of perhaps twenty five or thirty machines.

Q. You mean the Sumter Works?

A. Yes sir.

Q. The facts, however, as to the supplying of this device to the trade, with reference to the assembling in Chicago, are as you have previously stated?

A. Yes; we located a man in Chicago who could undertake the manufacture of the device comprising the bracket and ignitor mechanism, and he made this under our authority and by our direction, in Chicago, our purpose being to save freight.

Q. Who do you mean by "our"?

A. The authority first of the Sumter Electrical Company, of South Carolina and after the dissolution of the Sumter Company by the authority of the Splitdorf Company.

Mr. H. D. Moise here interrupted.

The Notary interposes: At the request of Mr. Vandeventer the witness, and also Mr. H. D. Moise, as a matter of courtesy, I have permitted Mr. Moise to accompany the witness and to be present at the taking of the deposition, but admonish Mr. Moise that he cannot advise the witness while on the stand. I cannot permit it to be done.

Q. The Webster Electrical Company of Racine, Wis., brought suit against the Sumter Electrical Company, of South Carolina, in the Federal Court, claiming that the plug oscillator manufactured or put upon the market by the Sumter Electrical Company of South Carolina, or under its authority was an infringement upon the patents under which the Webster Electrical Company were manufacturing its goods, did it not.

Mr. Moise: I advise you that you find out what suit it was. There were several suits.

Mr. Wright: I object to counsel interposing any suggestions to the witness, or any suggestions whatsoever.

Notary: The objection is sustained, and I hold that Mr. Moise may warn the witness or advise him as to his rights, but beyond that he cannot go. It is merely a matter of courtesy that I allow him to come into Court as Mr. Vandeventer's friend and legal adviser, and the examination must proceed regularly.

A. Do you refer to the suit that was started in the Federal Court at Charleston, S. C.

Q. I do.

A. Then the answer is, Yes.

Q. Were you familiar with that suit?

A. Only in a general way.

434 Q. Did you ever read over the allegations of infringement therein contained?

A. I think I read the bill of complaint.

Q. You knew that it was a claim of infringement for the manufacture of this plug oscillator?

A. I did.

Q. Did you know it at the time that the suit was filed?

A. I knew it after I read the bill of complaint.

Q. How long after the bill was filed was it that you read the bill?

A. I got a copy of the bill some time afterwards, from the attorneys.

Q. Immediately afterwards?

A. I think within a couple of weeks.

Q. You knew that bill was filed prior to the meeting at the Great Northern Hotel that I have referred to?

A. I was in the North when the bill was filed and was advised by telegraph, that the bill was filed.

Q. Were you attending that meeting at the Great Northern Hotel when the bill was filed?

A. No sir.

Q. Then the bill was filed and you read the bill prior to the meeting at the Great Northern Hotel, which was August 20, 1915?

A. I can't say. I don't remember whether it was before or after that meeting.

Q. It was a matter of considerable importance to your company when the claim was made of infringement against it, wasn't it?

A. We are annoyed by matters of that sort.

Q. Are they matters of common occurrence in your business; people suing you for alleged infringement.

A. We have the usual amount of it, that a business of this nature is subject to.

435 Q. You consider that a common occurrence in a manufacturing business like yours, that people sue you for infringement?

A. I don't care to express an opinion.

Q. Then let us go back. It was of considerable importance to you when someone said you were infringing by the manufacturing of the plug oscillator, wasn't it?

A. It was important, if true.

Q. And you would know, and did know, within a week that such a claim was brought by the Webster people?

A. Yes sir.

Q. You read over the papers and informed yourself, didn't you?

A. I read over the papers at some time, but whether within one or two weeks, I do not know.

Q. Then you didn't consider it important enough to find out what was claimed by the manufacture of the plug oscillator by the Webster people.

A. We passed the matter over to our attorneys.

Q. You were not acting as attorney?

A. I am not a lawyer.

Q. You didn't read over the papers to decide whether there was an infringement when you did read them over?

A. You couldn't tell whether there was infringement. It would depend upon priority.

Q. You would find out what the claim was.

A. You could find out what the complaint alleged.

Q. That would be of considerable importance to you at the manufacturing end of the business with the Webster people claiming as to the infringement?

A. It depended on the facts, not what was stated in the Bill of Complaint.

Q. Then you didn't consider it of any importance to 436 know what was in the Bill.

A. I considered it of sufficient importance to read it.

Q. And read it within a few weeks after the Bill was filed?

A. Yes sir.

Q. You can't tell whether it was before August 20th, 1915 or not?

A. No sir.

Q. Why did you go to Chicago?

A. To meet Mr. Manning and confer with Mr. Podlesak, whom I had never met.

Q. Who told you to come there?

A. I think I made the appointment with Mr. Manning.

Q. Who is Mr. Manning?

A. President of the Sumter Electrical Company of Chicago.

Q. You mean organized under the laws of Illinois?

A. I think so.

Q. You know he is not acting as an officer of the defunct Sumter Electrical Company of Sumter?

A. No sir, there is no such company.

Q. What was his office in August, 1915?

A. Vice President of the Sumter Electrical Company of Sumter.

Q. Had the Sumter Electrical Company of Illinois been formed at that time?

A. No sir.

Q. What other office did he hold?

A. I don't know.

Q. Did he tell you to come to see him?

A. I don't know, without refering to the correspondence.

Q. Have you the correspondence?

A. I think I can find the letter.

Q. Will you produce it at the next hearing?

A. I will endeavor to do so.

Q. I would like whatever correspondence passed between you and your company at that time and Mr. Manning, 437 or any officer of your company which related to the purchase of the Podlesak interests, so called.

Mr. Moise: I advise you that you have a right to refuse to produce.

Mr. Vandeventer: I have no reason for refusing.

Mr. Wright: I object again to any statement by counsel as to the privilege or right of the witness except as to any matter which will incriminate him.

Objection sustained.

Q. Then you will produce at the next meeting?

A. Yes sir, I will make diligent search.

Q. What was the purpose of your visit on August 20th, 1915, to Chicago?

A. Speaking from memory, and subject to revision upon the production of the letters, Mr. Manning informed me in a general way that he had talked with Mr. Henry J. Podlesak and that Mr. Podlesak indicated his willingness to sell certain patents which he owned, and I believe that Mr. Manning asked me to come out there and look after the matter at once, with a view to acquiring these Podlesak patent rights, and also certain contracts for the payment of royalties under the same patents, which then existed between H. J. Podlesak and Emil Podlesak, his brother, and the Webster Electrical Company.

Q. And you understood when you went there that in that way you would be able under the Podlesak patent to manufacture the unitary plug and bracket in the same manner as the Webster Company?

A. We didn't consider it necessary to acquire them for that purpose, but because we thought they would be a good investment and because we thought that would be the cheap-

est way to eliminate the suits which it seemed to be the
438 purpose of the Webster Electric Company to institute.

We never made any devices resembling those manufactured by the Webster Company in which the Podlesak magneto is employed nor did we contemplate doing so at the time these patents were purchased. We were principally alarmed at the time this transaction was entered into by the fact that the Podlesaks were threatening to engage in the magneto business, and one of the objects in our buying the patents was to eliminate them as possible competitors. We wanted them out of the field, although we did not care to use their names, and afterwards entered into a stipulation to this effect.

Q. Then you did know that there was a suit pending when you went up there?

A. Yes sir, I had been informed by telegraph.

Q. When you were there?

A. No sir, when I was in the North, before I went to Chicago.

Q. So when you found there was a lawsuit pending in Charleston against your company, then you were telegraphed to and went and got hold of the Podlesaks in order to get rid of that litigation. Is that true?

A. I think you have misstated the transaction. The Podlesaks had something to buy. I was called on to go out there and look into it and see if we wanted it.

Q. You said the purchase of the Podlesak rights would put an end to litigation?

A. We thought it would.

Q. There was litigation on when you went to this meeting?

A. Undoubtedly.

Q. Then your memory is refreshed and you know that litigation was brought previous to your visit to the Podlesaks, and you went to them to buy your peace?

439 A. That is substantially correct.

Q. And bought of the Podlesaks so as to silence the litigation the Webster people had brought against you?

A. That was part of the reason.

Q. What other reason?

A. We wanted to keep the Podlesaks out of the magneto business.

Q. How long had the Podlesaks been engaged on their own account in the magneto business?

A. I don't know. All of the information concerning the Podlesaks, I received second hand, from Manning.

Q. Then he would know more about it than you?

A. About their engaging in that business?

Q. Yes.

A. Yes.

Q. And when he said he was anxious to keep them out of the business, you took it from him and were anxious?

A. Yes sir.

Q. You did not investigate on your own account, but left that entirely to Manning?

A. We consulted together.

Q. Whatever he said to you was all one way? Your judgment was confirmed? Answer the question.

Mr. Moise: You have the right to answer the question in your own way.

Mr. Wright: I object on the ground that this attorney does not represent any party in this case, but claims to represent the witness. I have no objection if he will appear in this case for any party, but he should not, I object, instruct the witness in any form.

Objection sustained.

Notary: Mr. Moise, I instruct you not to interfere, unless you think the witness is in danger of incriminating himself, and I will allow you in that case, to advise the witness.

440 Mr. Moise: My presence is for the purpose of advising the witness of his privileges as such, which are not limited to answers which might incriminate him. Such answers could not possibly arise in this case.

A. My judgment was not formed until after I had met Henry Podlesak in Chicago, who told me that he was about to engage in this magneto business.

Q. Then your judgment was formed entirely by what was told you by Mr. Manning and Mr. Podlesak. You, yourself made no investigation.

A. I made no investigation and solely relied upon what was told me by Mr. Manning and Mr. Podlesak.

Q. Then there were two reasons why you wanted to buy: You wanted to get rid of litigation, and you wanted to get rid of the Podlesaks; is that true?

A. This is true and also for the reason that we considered the purchase of the Podlesak patents a good business investment.

Q. Then there was one third reason the investment reason. You were willing to invest seventy thousand dollars to buy certain patent royalties. You thought it a good invest-

ment, that you would get your money back with good interest on it. That is the third reason, is it not?

A. We thought those patents a good investment from a business standpoint.

Q. That would be a fourth reason, wouldn't it?

A. I don't think so. We thought those patents would earn sufficient in royalties to pay on the investment. We considered that the magneto business was an increasing one, and we did not desire then and do not desire now to see the licensee do less business.

Q. You would prefer them to do a greater business, so you would get greater royalties. You had three reasons 441 to get rid of the litigation, to get the Podlesaks out of the business and third that you would make some money for the payment of royalties over and above what you had to pay then, to wit, seventy thousand dollars.

A. Yes, these are the main reasons.

Q. Are there any other reasons?

A. None that I can think of at the present time.

Q. Whatever rights the Podlesaks had, you bought?

A. That is what we understand.

Q. The result of the meeting in Chicago, between you and other gentlemen representing the Sumter and Splitdorf interests and the Podlesaks, was to take an option to buy whatever rights the Podlesaks had. Is that true?

A. Substantially so, except that I do not think the Splitdorfs had any representative there.

Q. Who was the option taken for?

A. Mr. F. C. Manning personally, for himself, and it was transferrable to whoever he saw fit.

Q. He had no intention of paying \$70,000 on that option?

A. I cannot speak for him.

Q. What did you intend to do?

A. To secure the option and consult with the Splitdorf interests and see what they wanted to do with it.

Q. And if they wanted to buy it they would have the right to take it up?

A. Yes sir.

Q. Neither you nor Manning intended to take it up, except for the Splitdorf people?

A. No sir, that is not true. It was my intention after due consultation to take it up in behalf of the Sumter Company, which was my company.

Q. It was in process of dissolution, was it not?

A. It was not dissolved at that time.

442 Q. What happened was that the Sumter people and the Splitdorfs jointly took up the option?

A. Yes sir.

Q. And the Splitdorfs took the option and hold it at the present time, taking up the option from Manning and Company?

A. That is right.

Q. You have always supposed and never had anyone say to the contrary, that whatever the Podlesaks had passed by the various stages I have spoken of to the Splitdorf Company. In other words, there is nothing the Podlesaks had that you did not get?

A. In relation to their patent rights and contracts with the Webster Company, yes sir.

Q. And if there was any right that the Podlesaks could enforce against the Webster Company under the contracts which passed under that option to the Splitdorf Company. The Splitdorf Company could enforce that as against the Webster Company?

A. That is my understanding.

Q. Did you know at the time that this option was taken, on August 20th, 1915, that Henry Podlesak claimed and had served notice of a default on these contracts, as against the Webster Company?

A. No sir, I don't believe I did.

Q. If he had declared a default under it, it was declared for the purpose of enforcing the royalties, wasn't it?

A. I don't know.

Q. It was not discussed between anybody?

A. I don't remember discussing it with him. I think he volunteered on some occasion the statement that he had had some trouble in collecting royalties from the Webster Company.

443 Q. Prior to the time he gave this option to Mr. Manning?

A. I think it was.

Q. At the meeting at the Great Northern Hotel?

A. I don't remember. It was a chance remark, brought about in connection with some remark of mine as to whether we would have any difficulty in collecting these royalties.

Q. And if you had any difficulty, you would have a right to declare a forfeit?

A. I think so. It was, I think, in the contracts.

Q. Did you understand you were buying the right to enforce the payment of your royalties?

A. Yes, or we would not have bought them.

Q. You would not have put seventy thousand dollars in this particular basket unless you knew you could enforce its payment?

A. No sir.

Q. That would be part of the investment?

A. Yes sir.

Q. And any counsel you had could investigate what rights you had to enforce the payment of the royalties?

A. The so-called contracts between Podlesak and Webster were investigated by our counsel, and after he passed on them, we bought them.

Q. You didn't investigate them?

A. Only in a general way.

Q. I want to know what you did.

Witness: Mr. Notary, I think I am privileged not to answer that question. It is a question between counsel and client. I was patent attorney for the Sumter Electric Company and think that I am privileged to reserve answering the above question.

Q. I will change the form of the question, so as to ask you whether you made any investigation as to the amount
444 of royalties that were being paid by the Webster Company to the Podlesaks under these contracts at that time.

A. Mr. Podlesak exhibited to us certain statements which purported to be correct statements of the amount of royalties which he had received, and we estimated what we thought would be the further business of the Webster Company, in this line, and our decision to purchase was based upon the result of that investigation.

Q. Then there were investigations as to whether the representations of Podlesak as to the amounts paid were true?

A. I think he exhibited checks or statements from the Webster Company which we took at their face value.

Q. Do you remember what they showed?

A. I do not.

Q. You accepted them without any further inquiry as to the amounts?

A. We had no way of ascertaining that these papers were not O. K. in every respect. We could not go to the Webster Company and ask them, because they would very properly refuse to give us the information under the circumstances.

Q. Why?

A. They were not particularly friendly, having sued us, and I gathered from other circumstances that they would not be inclined to look with favor on the transaction.

Q. They would not want you to buy these patents?

A. I should think not.

Q. Why?

A. I didn't think they were friendly towards us. They had sued us in Charleston.

Q. Which suit you were trying to quiet by buying these contracts?

A. Yes sir.

Q. And you didn't want the Webster people to know that you were trying to buy them.

445 A. We had no objection to their knowing that we were trying to buy these contracts, but we did not feel like going to them and asking them as a favor to show us their books.

Q. You felt that in order to substantiate these royalty payments, the only thing for you to do would be to go to their books and find out, and naturally they wouldn't want to do that. That is what you mean?

A. I don't think the question of substantiating the royalty payments was gone into very much at the time of the purchase. The Podlesaks told us while they had had difficulties in getting the royalties, they had always gotten them, and we had no reason to believe they would refuse to pay them to us, as we could not see that it made any difference to the Webster people whom they paid.

Q. And your attorney so advised you?

A. I don't know that this point was ever discussed with counsel.

Q. The statements the Podlesaks made fitted into your estimate and you were satisfied to take Podlesak's word for it?

A. Substantially so.

Q. And actually so?

A. That is what he did.

Q. You say Henry Podlesak told you he had had some difficulty about collecting?

A. I think so, but whether this conversation took place in August, 1915, or later I am unable to recollect.

Q. He didn't tell you he was then engaged in a contest with the Webster Company over the amount of the royalties

A. No sir, not that I remember.

Q. And that there was a default declared by him because he claimed he had not received the royalties he was entitled to.

A. I don't remember.

446 Q. If there was such a default outstanding at that time you bought it, didn't you want whatever rights you had?

A. I don't know. I am not undertaking to construe those contracts.

Q. I am only trying to find out what you thought you bought there. I want to know whether if there was any default there you thought you bought it or not. You bought everything Podlesak had, didn't you?

A. Yes sir.

Q. If there was a default there, you thought you bought it.

A. I think that is a law question which I am not competent to answer.

Q. You got everything Podlesak had, and if there was anything you didn't know about, you got that, too, if it was anything they had?

A. The form of the question is to my mind an attempt to make me construe these contracts. We took a certain written conveyance from the Podlesaks, and I submit that that is the best evidence.

Q. Did you read over these contracts and know what they provided?

A. We did before the papers were signed.

Q. You were familiar with the contents of them?

A. At that time, we were.

Q. If these contracts provided for default, you were familiar with it at the time you paid your money?

A. Yes sir.

Q. And the right to declare that default as you understood it at the time?

A. I think so.

Q. Mr. Clements was the attorney representing the Sumter Company of South Carolina, at the time these meetings were held in the Great Northern Hotel, Chicago?

47 Q. Mr. Clements' status was that he went along with me as consultant, to advise me of certain matters in relation to these contracts and patents.

Q. He didn't advise you when you were negotiating?

A. He was present at those meetings and later on.

Q. What he advised you as between attorney and client as to these negotiations, wasn't advised in the presence of the Podlesaks, was it?

A. No, I think we consulted together privately.

Q. So there was nothing of a private nature passing between you and Mr. Clements in the relation of attorney and client, when anyone else was present.

A. We might have gone off in one corner of the room and consulted together.

Q. They could not have heard it? It was a matter that concerned you and your company, wasn't it?

A. Yes sir.

Q. But when you were negotiating with the Podlesaks there, these confidential things were not expressed in the presence of the Podlesaks?

A. No.

Q. You didn't say to Podlesak "there is a suit pending in South Carolina and we want to get rid of it?"

A. I don't remember. I might have mentioned it and probably did.

Q. There was no confidential relation that would prevent your saying it. There was no confidential relation existing as to it?

A. No sir. Podlesak knew all about it. He helped sign the Bill of Complaint.

Q. What did Podlesak say to you?

A. I don't think we touched on that sore subject at all.

Q. It was a sore subject?

448 A. A lawsuit is never a subject of joy to the victim.

Q. The noose is never a pleasant thing around the neck of the fellow that is going to jump? What did you say about the lawsuit to Podlesak? Was it discussed?

A. I don't think it was touched on at all, except perhaps in a casual way. We went to buy what he had to sell.

Q. But you had certain definite purposes; and one was to quiet this litigation. Didn't you tell him about it?

A. I don't think so. I think it was a self evident fact that if we bought the patents we could not be sued under them.

Q. Did he say so?

A. I don't remember.

Q. He had something to sell at \$70,000. Didn't you consider that a big price?

A. We considered it a fair price. We paid it.

Q. He was only getting \$8000 for his patents.

A. I don't remember what the royalties amounted to.

Q. As an officer of the company, you don't remember?

A. I knew then.

Q. You ought to remember and know now. You said it was a good investment.

A. We based our purchase more on what we thought the royalties would be from that time on than on any shipments made up to that time. We knew that the business of the licensee was increasing and would increase proportionately.

Q. Podlesak knew it?

A. Yes, and the high price was based on that.

Q. Not on quieting litigation?

A. Principally.

Q. You don't want to say what portion of \$70,000 was paid on any one of the things you were buying?

A. No, I do not wish to attempt to divide up the \$70,000.

Q. The result of this thing was that you did immediately get this suit dismissed?

449 A. Yes sir.

Q. You made a motion in the United States Court in Charleston, and based it upon the fact that you had acquired the Podlesak rights, didn't you?

A. We instructed our attorney to do whatever was necessary, and supplied him with a copy of the contract we made with the Podlesaks, and he did what was necessary. What illegal steps he took I do not know.

Q. The sore spot was waived. The suit was withdrawn?

A. I am informed that it was.

Q. You knew it.

A. Counsel notified us it had been dismissed.

Q. And the sore litigation was dismissed?

A. Yes sir.

Q. You have said that you wanted to get rid of the competition of the Podlesaks. You knew that about five months previous to this meeting Emil Podlesak had ceased to have any connection with the Webster Electric Company?

A. No sir, I don't know anything about that gentleman at all.

Q. Then you don't know that he was in the employ of the Webster Electrical Company up to a short time prior to this meeting in August, 1915?

A. I don't think that I did.

Q. Didn't know anything about him at all?

A. I might have heard it at some convention or gossip that goes around the trade, but I don't remember anything about the Podlesaks or their connection with the Webster Company until about the time of that transaction in Chicago, although I knew of Henry J. Podlesak as early as December 15th, 1913.

Q. Had they been manufacturing, or did they ever manufacture any devices which your company had manufactured or was then manufacturing?

A. Not that I know of. All we considered was that the Podlesaks knew a great deal about the magneto business, and from the information I could gather, they had supplied the Webster Company with their designs, and we looked upon them as being skilled men in that business.

Q. And you wanted to get away from any competition they might make, entering the field you were in.

A. We didn't care to see another manufacturer enter the business.

Q. They were just starting: They had never done anything?

A. I don't know.

Q. You would know whether there was any magneto manufactured by the Podlesaks on the market?

A. They had not manufactured at that time.

Q. You knew the Websters were manufacturing?

A. We did.

Q. And there was nothing the Podlesaks had put out up to that time?

A. Nothing I know of.

Q. So the competition you feared was what might arise thereafter?

A. Yes sir.

Q. That they might go into something that might compete with you, and that was one of the things you were buying?

A. Yes sir.

Q. When the Podlesaks came into this meeting, did he produce his contracts with the Webster Company for the examination of your counsel.

A. I think he handed them to Mr. Manning.

Q. So Mr. Manning had before him these contracts and knew their contents before the option was drawn up.

451 A. I think so.

Q. There was no question presented then as to whether the patents were good or not, or whether the con-

tracts were good or not. What you were buying was whatever they had there. You didn't undertake to investigate whether the patents were in litigation or not and whether there was any claim by the Websters in connection with the patents. All you took was what they had there?

A. I think that was all the law would give us.

Q. There was no discussion between you and the Podlesaks with reference to whether the patents were good or not?

Witness: Now, Mr. Notary, I think I am privileged. I went there in the capacity of attorney for my company.

Q. What then was the capacity of Mr. Clements?

A. Mr. Clements went there as my consultant; was employed by me personally for that purpose.

Q. He didn't represent your company?

A. Only by my direction and authority.

Q. Where did you meet Mr. Clements prior to this meeting of August 20, 1915?

A. You mean the first time? I think I met him in Washington and went to Chicago with him.

Q. He went at your personal representation?

A. Yes sir.

Q. And didn't represent the Sumter Company or the Splitdorfs?

A. No sir.

Q. You represented them?

A. Yes sir.

Q. You say you are not an attorney?

A. I am not an attorney at law; I am a patent attorney.

Q. My question was directed as to what was said between you and the Podlesaks as to whether their patents were good or not.

452 Witness: Now, Mr. Notary, I submit that is forcing me to pass an opinion as to these patents.

Q. I want to know what was said there between you and the Podlesaks as to whether their patents were good or not.

A. How can I answer that without expressing an opinion as to the patents? They represented them to be good and valid.

Q. You didn't make any particular investigation along that line, did you?

A. As to the validity and scope of those patents? Yes, we did.

Q. Then the question as to whether or not he had a right

to manufacture, use and sell the unitary plug bracket did come up?

A. Podlesak stated plainly that he had this right.

Q. To make, use and sell the unitary plug bracket?

A. Yes, and that this right was assignable, and it was on this representation that we bought what he had to sell.

Q. You didn't investigate the relations of Emil Podlesak one of the owners, with the Webster people, did you?

A. We did not.

Q. You didn't consider it necessary to in any way go back of these agreements on their face, to see what the Webster Company's claims would be in relation to them, did you?

A. We were advised by counsel that any prior verbal contract or contracts of any sort had been merged in the three written agreements.

Q. Then the question whether there was a verbal or other construction of the contract was up for discussion?

A. I don't think it was up for discussion at that time.

453 Q. It was before you took over the option?

A. I don't think it was up for discussion. I think it was mentioned in-so-far as Webster's attitude was concerned, whether or not they would make any attempt to break these contracts, and I think that was only discussed in a general way.

Q. Anyway the \$70,000 passed, or the contract to pay the \$70,000, of which \$25,000 was paid in cash, without your making any inquiry as to the Webster Company reference to any oral contract or other construction of the contracts than what appeared on its face.

A. We made no inquiry of the Webster Company.

Q. You didn't make any inquiry as to the relation of one of the joint owners to the Websters before you paid this?

A. We didn't in relation to Emil Podlesak.

Q. Or Henry?

A. I think we talked over his past relations with the Webster Company, but I don't remember the exact conversation. I didn't attach any importance to it at the time.

Q. Who did you talk it over with? Your attorney, Mr. Clements, or who?

A. With Mr. Manning, and I think Mr. Clements was present on one occasion.

Q. Anybody else?

A. Not that I recollect.

Q. You were willing to take the chance, whatever that chance was?

A. I don't know that we took any chance. We carefully investigated what we were getting, and it was satisfactory to us and we bought it.

Q. What did you do?

A. We interviewed Henry Podlesak and discussed 454 various matters and things set forth in the contracts and what the redress would be and then we entered into the contracts.

Q. That investigation was confined to that circle. You investigated and Mr. Henry Podlesak and his brother?

A. We saw no reason to go outside of that circle?

Q. And you didn't.

A. No sir.

Q. I think you said earlier in the examination that you bought whatever the Podlesaks had. Did you know that those two contracts required the use of the Podlesak name?

A. We did.

Q. Did you buy the right to use his name?

A. I don't know without reference to the contract, but I know that point was raised afterwards by the Websters, and we signed a stipulation or agreement covering that point, so there could be no possible interference with the Webster Company's business. We never used the name Podlesak in connection with our business in any way, shape or form and didn't want it, and so stipulated.

Q. You stipulated in the suit against you, the Sumter Electrical Company of South Carolina, the Splitdorfs and the Podlesaks by the Webster Company in the United States Court in Chicago?

A. I don't know whether it was so stipulated in connection with the suit or whether we did it of our own free will.

Q. Why would you stipulate with the Websters of your own free will that you would not use the Podlesak name?

A. To show the Webster Company that we have no desire to injure them in any way.

Q. Suppose I refresh your memory by saying that it was ordered by the Judge as to what you should or should not do?

A. I am willing to accept your statement, but I don't know whether it was in the order.

455 Q. You have stipulated that you would not use the Podlesak name, but not until the bringing of this suit, have you?

A. I don't remember that.

Q. You don't consider that a binding agreement with the Webster Company that you never will?

A. I don't know, but personally, I would be willing to have it binding. I don't think we would want to use the name.

Q. You wouldn't stipulate that you wouldn't make a plug oscillator. You think you have a right to make that?

A. Yes, I think we would have a right to make it.

Q. Did you know that in the contract between the Podlesaks and the Splitdorf and Sumter people there was a conveyance of good will by the Podlesaks to the Splitdorf and Sumter people?

A. There may have been. I don't recollect it.

Q. You were buying something there for which you were paying twenty five thousand dollars down,—at least your company and the Splitdorf Company were. Did you consider that you got any good will?

A. We paid the Podlesaks for the license and patent agreements and five thousand dollars additional for their good will, whatever it might be, for a period of years. As to the contents of those agreements and those contracts, it has been a very long time since I have read them. They were made in 1915, and almost two years has elapsed and if I am to be questioned, they should be produced.

Q. I wil refresh your memory with reference to those contracts before we finish the examination. You do remember now, before the contracts are shown you, that there was five thousand dollars paid to the Podlesaks to keep out of the business for a limited time.

456 A. I don't remember exactly what the five thousand dollars covered, but I think there was a separate payment of this amount, covering substantially what you state.

Q. That is to say the competitive features, what you say let you to enter into this transaction was placed as being worth five thousand dollars?

A. I don't know whether that was the worth of it or simply a nominal sum that was figured. That was the consideration named. Whether that was all the value, or whether that was part of the value and the balance was merged, I am not prepared to say.

Q. When your memory is refreshed to the extent that five

thousand dollars was the consideration expressed for the Podlesaks to keep out of business, or the competitive feature, you don't want to say how the other \$65,000 was apportioned as to royalties and the quieting of litigation?

A. I don't wish to attempt to make any disposition of the \$70,000 at all.

Q. I will call your attention to the contract between Emil Podlesak and Henry Joseph Podlesak, parties of the first part, and the Splitdorf Electric Company and Sumter Electrical Company of Sumter, parties of the second part, which is annexed to the bill filed in Chicago, to which I have already referred, and to that portion of the contract which I will now read to you:

457 "It is understood and agreed that the preparation and the prosecution of all applications for patents on inventions hereby conveyed or agreed to be conveyed, including both pending and new applications, original, divisional, re-issue and extension, shall be by the attorney or attorneys for the parties of the second part, on their designation, and the parties of the first part hereby appoint said attorneys as their attorneys for such purpose, and agree that they will at all times keep the parties of the second part or their said attorneys fully informed as to inventions they may make which might fall within the terms of this agreement, and that they will at all times aid and assist in the preparation and prosecution of said applications, and in any proceedings ancillary thereto, all, however, without expense to themselves for costs or attorneys' Fees, said expense to be borne entirely by the parties of the second part. The parties of the first part also agree that upon demand of the parties of the second part or said designated attorneys, they will execute assignments satisfactory to said attorneys of all said inventions and improvements not herein specifically designated but included within the scope hereof."

Do you remember that clause in the contract?

A. I do.

Q. And that was one of the things you expected to have the Podlesaks comply with, or it wouldn't have been there. Isn't that true?

A. Yes, sir.

Q. Do you recall that there was also in that contract a guaranty of title?

A. Yes sir.

Q. And whatever was necessary to be done by the Podle-

saks to make good what you were buying, you expected 458 them to do.

A. Yes, I recall that.

Q. Now, if it was necessary to examine the books of the Webster Company with respect to royalties, in order to see that you were getting all the royalties you were entitled to, you expected to do that too, didn't you?

A. I think we would have that right, under the contract.

Q. And would exercise it. There would be no question in your mind, as representing your company? You would exercise it if you thought it was to the interest of your company to do so?

A. It depends on the circumstances. If we believed the Webster Company made a return in good faith, we would have no desire to exercise that right arbitrarily, and would only do it as a last resort.

Q. If they defaulted in the payment of royalties, you would exercise the right to default their contracts to manufacture under the Podlesak licenses, wouldn't you?

A. I think we would.

Q. That of course would put an end to the payment of all royalties wouldn't it. Then you would have to go to work and manufacture yourself?

A. Not necessarily.

Q. What would you do? You wouldn't be getting your royalties?

A. No.

Q. Then you would have a right to make use and sell all the Podlesak devices.

A. I think we have that right anyway, under the contract.

Q. Not to manufacture the tripolar magneto?

A. We don't claim to have the right to manufacture anything covered by the patents enumerated in the so-called exclusive patents. There are two groups of patents. One 459 group of those patents is exclusive to the Webster Company, and the other group we consider that we have a right to manufacture.

Q. And in the group you consider you have a right to manufacture is the unitary plug and bracket?

A. You mean the device alleged to be covered by the Podlesak reissue patent.

Q. Yes.

A. Yes.

Q. You do claim the right to manufacture that?

A. Yes.

Q. Your plug oscillator has the Unitary plug and bracket construction, hasn't it?

A. Yes.

Q. And that is what the Webster Company claim was an infringement?

A. Yes.

Q. Now, going back to this question of default; you know that all the royalties are paid under the contract which you have just referred to as the exclusive right contract?

A. I don't know without examining the contracts.

Q. The second contract covers the second group and provides for the manufacturing, using and selling, under the so-called shop right license by the Webster Company in connection with the devices in the first group, as you have expressed it. Is that true?

A. After examining the contracts and exhibits C, D, and E, annexed to the bill which you have shown me, I find this is true.

Q. Then as you understand it, the default declared by the present holder of the rights under these contracts as against the Webster Company, would carry the right to manufacture, use and sell all of the Podlesak devices.

A. I am not prepared to express an opinion of that.
460 The legal force and effect of the first contract, the exclusive contract, I am not competent to pass upon.

Q. However, it is perfectly clear to you that declaration of a default, and the failure of the Webster Company to repair the default within the time specified in the contract would operate so that you would not receive any royalties.

A. If they failed to pay royalties, we would not get them.

Q. And you would then have the right of the Webster people in the Podlesak contracts, whatever they were?

A. I am not competent to pass upon the scope of the exclusive license as to whether if default be declared by the Webster Company we would have such a right.

Q. But that would be the case under the shop right license?

A. I don't think they would have any right under the shop right license if they defaulted and we took advantage of the default.

Q. The tripolar magneto is exclusively manufactured by the Webster Company, isn't it?

A. I believe so.

Q. Don't you know it.

A. There may be someone making it that I don't know anything about.

Q. You are pretty well posted as to the magneto business?

A. Yes, sir.

Q. If there was another low tension magneto in the market, you would know it?

A. I think our men would find it.

Q. You are manufacturing low tension magnetos?

A. Low and high.

461 Q. If another came into the market, you would know?

A. It is very probable.

Q. Wouldn't you know it?

A. A man on the Pacific coast might put out good magneto before I knew it?

Q. You haven't heard of any other tripolar magneto?

A. No sir.

Q. So far as you know, it is exclusively manufactured by the Webster Company?

A. Yes sir.

Q. Under the exclusive contract?

A. Yes sir.

Q. And for everything manufactured, your company gets a royalty?

A. I hope so.

Q. If you did not think so you would go to work to find out?

A. I have no authority to go in that direction.

Q. But you have rights to get royalties on everything manufactured.

A. The Splitdorf Company has rights.

Q. No one questions your right to these royalties? There is no question as to that?

A. I have never heard any raised.

Q. The Webster people don't deny that the mere payment of the royalties under that contract should be paid to you or your company, do they?

A. I have never heard of it.

Q. They are paying them?

A. So far as I know. Mr. Preble, our treasurer would have the certificate of the receipt of these royalty checks.

Q. You know about the litigation in Chicago, don't you, between the Websters, the Splitdorfs and Sumter Electric Company?

462 A. Yes sir.

Q. You have been there?

A. I have been up there, but never attended any of the hearings.

Q. Weren't you in Court at any time?

A. No, sir.

Q. But you were there at the time?

A. No sir, I don't think I was in Chicago on any day a hearing took place.

Q. But when it was pending?

A. Yes, sir.

Q. You have read the answer of the Splitdorf people?

A. Yes sir.

Q. You supplied the information?

A. Some of the information.

Q. Who prepared it, Mr. Clements?

A. Messrs. Gann & Peck, of Chicago, I think.

Q. Have you read a copy of it, the answer of the Splitdorf Sumter Company?

A. Yes sir.

Q. You were familiar with its contents? When it was filed or afterwards?

A. I think I read it after it was filed. I don't think I ever read the complete answer before it was filed.

Q. Is your understanding that the main issue involved is whether the Podlesaks had the right to convey the title to make use and sell the second group of devices you spoke of? Is that the question as you understand it?

A. I think that is one of the allegations in the bill. That bill is over 125 pages, and it is difficult for me to point out to which particular allegation the plaintiff attaches most importance.

Q. I want to know what your idea is as to the main issue in the case, as to whether or not it has anything to do with the right of the Podlesaks to convey the title to your company to make, use and sell the Unitary plug bracket.

463 A. If I am to judge by the room taken up by the various matters in the bill, it would seem that the conspiracy charge is the gravamen of the case.

Q. What do you understand the conspiracy charge to be?

A. I don't understand what the charge is.

Q. You picked that out as the most important allegation. I want to know what you understand it to be?

A. That the Splitdorf and Sumter Company had conspired with the Podlesaks to deprive them of rights that they have

with the Podlesaks, and to injure their business and hinder their progress.

Q. You take that to be the whole thing?

A. I take that to be the main thing, because they devote most space to it.

Q. Do you consider there was any question as to the right of the Podlesaks to convey the right to make, use and sell the unitary plug bracket?

A. Yes sir.

Q. If there was a default, you would have that right, without any question, a default on the part of the Webster people to pay the royalties.

A. That depends on the legality of the contracts and their force and effect.

Q. And that is what you understand to be the issue between you and the Webster Company in that suit, as to the force and legality of the contracts?

Q. One of them.

Q. What are the others?

A. The Bill is the best evidence.

Q. I want your impression.

A. I considered the allegation principally on the conspiracy charge; that these two companies and the Podlesaks have conspired to injure their business, and that the litigation has been brought about by that feeling.

464 Q. If you go into the same field which they occupy by their tripolar device it would decrease the amount of royalties which they pay you?

A. It probably would if we went into that field to the extent it would hurt their business, but the field is so large that the two companies would run to capacity without interfering with the other.

Q. You claim you have the right to manufacture the Unitary plug and pracket which the Webster Company is manufacturing.

A. That is being manufactured by companies other than the Webster.

Q. What Companies?

A. Accurate Manufacturing Company and Hercules Manufacturing Company.

Q. Don't you know those companies have been sued by the Webster Company because they are infringing upon the Podlesak patents.

A. I believe they were.

Q. Have you anyone else in mind than those you have spoken of, as manufacturing the Unitary plug and bracket?

A. No.

Q. If there was a default, it would put the Webster people out of the business of manufacturing the Unitary plug and bracket?

A. That would depend entirely on the attitude we would take, in case of default.

Q. That is, you might license them to continue manufacturing?

A. We might waive the default for a certain time, in order to allow the people they supply to continue their business. Owing to the conditions during the war we would be unable to take care of the Webster business.

465 Q. It would be under your control?

A. You mean they would continue existence at our pleasure?

Q. Yes sir.

A. Yes sir.

Q. That is what I understand. Now the United States Court of Chicago directed you to keep track of the Unitary plug and brackets manufactured or the plug oscillators. Are you doing that?

A. Yes sir.

Q. You are about to manufacture more of the plug oscillator, so-called, than before you bought the right from the Podlesaks?

A. Our business in that line is continually increasing, due to the natural increase of business in the gas engine field.

Q. And you are soliciting the trade for the plug oscillator now more than ever?

A. Only to a limited extent. We are unable to take care of much more business in that line than we now enjoy, our principal business being confined to other lines.

Q. But you are now entering the Webster field with your plug oscillator more than ever before?

A. I don't think the Webster company has any mortgage on the people we are doing business with, and I don't think we have ever supplanted the Webster line. The customers we are preparing to supply at the present time I don't think have used the Webster magneto, because I don't think in the opinion of their engineers it is suited to their engine equipment.

Q. You don't know who the customers of the Webster people are?

A. In a general way. Any man travels in the field sees the engines and sees the magnetos in it.

466 Q. So to some extent you have got the name of the Webster customers; but do you know the cost of the Webster device?

A. Not what it costs them.

Q. You know what your own costs are?

A. Yes, sir.

Q. And how those costs of material, labor and overhead compare with the like items of the Webster Company,—that you do not know.

A. We could only estimate what their labor and overhead is. We could estimate pretty accurately as to the material if it was necessary, but the machines we make do not remotely resemble the Webster magnetos.

Q. So you have got estimates at hand to compute the manufacturing cost of the devices manufactured by the Webster people.

Reference adjourned until ten o'clock May 25, 1917.

Examination of the witness, H. R. Vandeventer, resumed at ten o'clock, A. M. Friday, May 25th,—the counsel for the defendants only appearing.

Q. Did you produce the correspondence that I asked for at the last hearing?

I have made search of my files and find a letter from Mr. Manning, dated August 10th, 1915, a true copy of which I herewith produce.

(Letter marked for identification with the initials of stenographer, "E. M. D.")

The same is here incorporated in the record and return herewith, as follows:

"Copy.

To:

Sumter works

467

August 10, 1915.

H. R. V.

Subject: Patent Matters.

Dear Van:—

Although I am terribly rushed today trying to get things in shape to leave for Nebraska tonight, H. J. Podlesak dropped in and gave me a chance to find out what he knew about Webster's latest move. H. J. brought in his new oscillator to

show me. He had just come in from Champlain, Illinois, where they had been holding a tractor meet, and said one of the Webster agents had told him he understood there was a deal on between Webster and Sumter, and that Webster was going to take over Sumter, or vice versa. Someone had also told him that Williams, Brown, Mr. Webster, and a Mr. Becker, the latter a Chicago Banker, were all in New York where an important conference is being held, or was held last week with the Sumter interests.

I asked H. J. what he knew about the patent Webster Company is claiming as anti-dating the Dixie. He says it is the old Varley idea which has been modified to some extent by the original Webster Company's engineer, one Milton, the exploits of whom nearly wrecked the old Webster Manufacturing Co. This fellow, Milton, he says is the chap who got him (H. J. and his brother Emil) into the Webster organization because of Milton's infringement of the Podlesak Patents, the matter having been finally adjusted by Podlesak giving the Webster people a license, there royalties to be not less than \$5000.00 per year. This year it will run to \$12,000.00 he says.

It appears that Milton had some agreement with the original company (Webster) whereby if they sold out he was to be paid \$50,000. This was compromised to have the amount and that the present Webster Company had to pay off this \$25.00. H. J. claims that the old Company's experience 468 with Milton's high tension machine costs them many thousand dollars and that if they have any idea of reviving this machine it will soon break the present company.

He says Lynn Williams evidently thinks some of the claims of this patent may read on the Dixie, but that he does not think Williams has a very broad idea of the previous history of machine of this Varley type. Podlesak is evidently very well informed as to the similarly constructed machines resembling the Dixie, and I believe it would be a good idea for you or Clement to have a talk with him, as he can tell you a great deal of the history of this Milton-Webster patent, his suggestions to Milton, etc. etc. He said he had just scrapped one of these old machines a few days ago. It appears that Milton went from the old Webster Company to the Remy people, where he did more experimenting with machines of the Varley principle. Soon after he married a woman of some means and for the past year or so has been living in Detroit where he has been developing some other devices, and

recently has written Emil Podlesak offering him a proposition to come with him and commercialize his new scheme. I neglected to ask Podlesak what the new scheme is.

I think I have scared H. J. pretty well out of the idea of manufacturing his own new machine, but from what I could get out of him today, it appears he has the right under his agreement with the Webster Company to manufacture any of the Podlesak outfits himself, or to sell his patents with this right to manufacture and sell without interference from the Webster Electrical Company. Brown would probably dispute this, but he says his contracts with the Webster Co. will

make clear his rights as stated in the premises. Now, if 469 Brown (the Webster people) gets too obstreperous, and if

the bad feeling between Brown and Podlesak continues to brew as at present, I think H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business, and with their line and the plug oscillator, we sure would be in shape to command the field. I don't think Podlesak would expect anything like royalty he is collecting from the Webster Co., and besides this Brown is getting 5% on the gross sales, besides his salary.

It is pretty rough on me, with these matters coming up and without my knowing anything of what has been going on down in New York, beyond which you wrote me the other day, so I hope you will advise me fully in the premises. I certainly wish you and Mr. Clement would get out here together, as I believe we could have a very interesting "round" with the Podlesaks.

Hope you can get some sense out of of the above, all of which I have run off in a hurry and on an empty stomach too, as I haven't had time to get to lunch today.

Hastily,

(Signed) F. C. M."

F. C. M. KW. #40."

Q. Is this the only correspondence that you have relating to this subject?

A. That is the only correspondence I can find that relates to the Podlesaks and those contracts and patents.

Q. Have you a copy of the answer which was sent to this letter.

A. No, I have not, and it don't appear that there ever was an answer sent, because I went out there immediately after

that time. I was in Chicago within a week or ten days 470 after that. In fact I was there on August 20th, 1915, and this matter was verbally discussed and settled.

Q. But you have said in this examination that you were in the North and were told to go to Chicago and take up this matter with the Podlesaks. Is this because this letter was received in your absence and word sent to you?

A. I think so. I do not think I was in Sumter when this letter got there. Whether I came there between the 10th and 20th of August, I do not know.

Q. What would be the custom at your—office with reference to a letter of this kind? Would a wire be followed by a copy of this letter to you?

A. If I were going to remain very long it would, but I don't generally stay very long. They would probably wire me the substance of the letter.

Q. And then when you got to Chicago, you would see Mr. Manning and whatever was in this letter would be discussed with you then?

A. Yes sir.

Q. Calling your attention to the sentence in this letter: "Now, if Brown (the Webster people) gets too obstreperous and if the bad feeling between Brown and Podlesak continues to brew as at present, I think H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business, and with their line and the plug oscillator, we sure would be in shape to command the field." Was that discussed between Manning and yourself?

A. I don't think so. My understanding of his language is that he refers to the threats that I understood had been made by Mr. Brown in connection with the litigation he was going to start. The Webster Company had told certain customers that they had the exclusive right to make these 471 plug oscillating magnetos, and were, as it were threatening these people, and I think that is what Mr. Manning has reference to.

Q. What people were they threatening?

A. The trade generally.

Q. Anyone that made the plug oscillators?

A. Anyone that made the plug oscillators.

Q. Anyone else?

A. Yes, or rather, that used the plug oscillators. I don't think they were threatening us at that time. There was some

correspondence that passed between us at one time. I am quite sure it was prior to that letter.

Q. At that time the suit down in Charleston claiming infringement against you had been brought?

A. I think so. I think Mr. Manning refers to that in the first paragraph of the letter as "Webster's latest move". I think that remark refers to the Charleston suit.

Q. But please notice, Mr. Vandeventer that the paragraph I have quoted to you refers to bad feeling between Brown and Podlesak. What was the bad feeling between Brown and Podlesak?

A. I am unable to state. I have never met that gentleman at that time, and did not know anything about it. It might be something about which Mr. Manning had knowledge.

Q. When you did go to Chicago and meet these two gentlemen, the Podlesaks there, was some language indulged in by the Podlesaks that was not complimentary to the Webster Electric Company and Brown.

A. I don't remember hearing anything you would term derogatory. I don't think they were particularly friendly. I went there for a specific purpose and not knowing the ins and outs of the matter; didn't press this matter. They were there with their papers and contracts to do business, and as there was no need for me to work up the situation, I confined myself strictly to the business end of it.

Q. The situation had been worked up before you got there?

A. I don't know.

Q. You said there was no need for you to work up anything. They were there ready to talk.

A. They were.

Q. Whatever preparatory work was necessary had been done before the meeting by Mr. Manning?

A. I can't say what he did.

Q. Didn't you talk with him about the feeling between Brown and the Podlesaks?

A. I don't think I talked with him as much as he has written in that letter.

Q. You knew there was an atmosphere of hostility between the Podlesaks and Webster.

A. I had an idea from that letter that for reasons I knew nothing about the Podlesaks were ready to sell their contracts. As to the nature and extent of those reasons, I was not informed at that time and am not to this day.

Q. Afterwards, in 1916, you went into a meeting at Mr. Becker's office, at which were present Chicago Counsel representing you, Mr. Manning, Mr. Becker and Mr. Brown?

A. I remember such a meeting, yes sir.

Q. Have I stated all who were present?

A. I think that is correct.

Q. Who was the counsel representing you?

Q. I think it was Gann and Peaks, representing the Splitdorf people.

473 Q. Both?

A. I think Mr. Peaks.

Q. Did you make the suggestion at that meeting that the Sumter Electric Company of Chicago should act as sales agent for the Webster company and that the Webster company should continue in the manufacturing end of the business?

A. There was a great deal of general conversation at that meeting, which, so far as I was concerned, was for the purpose of promoting peace and good feeling between the respective companies, and I threw out a number of suggestions as to how that feeling could be started, and among others I might possibly have suggested that Mr. Manning and Mr. Brown get together and try to settle their differences in regard to the sales. I thought if they did, both factories could be run to capacity and thereby everybody would be suited.

Q. Did Mr. Manning comment upon whether or not the Sumter Company, of Illinois would like to take over the sales of the Websters?

A. I think that he and Mr. Brown agreed to have a conference and some time after one called the other up with that in view, but for some reason or other no negotiations were made. I can't speak as to what Mr. Manning's Company would be willing to do.

Q. What did Mr. Manning say as to taking over the sales?

A. You mean at that meeting?

Q. Yes.

A. I don't think they thought my suggestion a very practical one. I think Mr. Manning in open meeting raised two or three objections that it wasn't a workable thing.

Q. You thought it was workable, because you suggested it.

A. I threw it out with the idea of starting something. My idea all along has been to settle it amicably and preserve
474 the interests of both corporations. I have nothing to do with the sales of the Chicago Company, and merely put

out that suggestion for Mr. Brown on the one side and Mr. Manning on the other to take it up and work out something.

Q. Mr. Manning has charge of the sales and would know more about it than you?

A. Yes sir.

Q. And he objected to your suggestion?

A. I think he said he didn't see how it could be done, but he didn't oppose it strenuously, because he agreed to talk with Mr. Brown and afterwards he told me he had called up Mr. Brown, or Mr. Brown had called him, and made an appointment, but I don't think they ever had the conference.

Q. That is tried to make an appointment?

A. Yes, sir.

Q. Was anything said by Mr. Brown at that meeting that in view of the action of the Sumter and Splitdorf companies in dealing with the Podlesaks in respect to these patents, he believed that it would be disastrous for the Splitdorf or Sumter people to come in contact with the Webster trade, and did you, in connection with that imputation, or anyone else, make the remark or a remark to the effect that very likely the Podlesaks had represented you people as being dishonorable, and that very likely the Podlesaks may have represented that the Webster people as being dishonorable.

A. I don't remember any such remarks. There were several talking at once in the room, and it might have been made in the room without my hearing it.

Q. I wanted to refresh your memory with that long statement. Now, I will ask whether you or anybody on your side didn't say that it was likely, in view of the fact that
475 the Podlesaks had represented the Webster people as dishonorable to you, he might have represented you as dishonorable to the Webster people.

A. Not that I remember.

Q. Or instead of using the word, dishonorable, some expression derogatory to the Webster people to you by the Podlesaks.

A. I don't remember that the Podlesaks were discussed at that meeting at all.

Q. You people were holding that meeting there for the purpose you have stated, and there was some considerable bad feeling between Mr. Brown and the Webster people and your Company, the Splitdorfs and Sumter and yourself and Mr. Manning, wasn't there?

A. That bad feeling has largely been on one side. We

have been attacked in this matter, and, personally, I had no bad feeling towards Mr. Brown and the Webster Company. I never knew Mr. Brown. I think the first I ever knew of Mr. Brown was in connection with a letter written December 12th, 1912, when, I believe, he was with the Hercules Company or the Elkhart Company, and that letter was written by Mr. Brown, in connection with a letter I had written him about an alleged infringement of one of our patents, No. 1031016, and I never heard anything about Mr. Brown after that time, until I had occasion to writ a letter to the Webster Company about October 27th, 1913, in which I notified him about the infringement of one of our patents, No. 1030243, and I wrote him just as nice a letter as I knew how to write, and I got a very nice letter in reply in reply from Mr. T. K. Webster, dated November 3rd, 1913, in which he said he had referred the matter to Mr. Williams, his attorney, and in which he

476 agreed with me that we did not want any patent suits, but did want our patents respected and would like to get together on some kind of understanding about the patent situation, and we got a letter from Mr. Williams saying they had made a change in their advice and while they didn't admit an infringement, they had made this change so that we could say that our patent had been respected. There was nothing in our correspondence with Mr. Brown that would cause me to take offense at him or he at me. I would like to put this letter on the record as tending to show the friendly condition then existing between the Sumter Company and the President of the Webster Company.

Q. I have no objection to your putting this letter into the record, subject, however, to my objection to its competency and relevancy.

(Copy of letter follows on following page.)

477

Sumter, S. C. May 29, 1917.

Mr. M. Reynolds,
Sumter, S. C.

Dear Sir:

Referring to the testimony taken in re Podlesak v. Webster Electric Company, before you as Notary Public on May 24th and 25th, I would say that I have read over and signed this testimony, and find the following corrections should be made:

Page 3, line 2, cancel "Ridgeway", insert "Ridgewood".

Page 4, line 2, correct spelling of the word "physical".

Page 6, line 7, correct spelling of "Van Deventer."

Same page, line 18, after "neto" insert "and a".

Page 7, line 6, substitute "is for" "was. Line 8 substitute "is" for "was".

Page 10, line 24, after "tell" insert "from reading the papers".

Same page, line 31, insert capital A at head of line, this being an answer.

Page 11, line 25, the answer should be "I don't know".

Page 12, the last answer on the page should have a capital A. in front of it.

Page 19, tenth line from bottom, correct spelling of the word "want".

Page 23, line 16, after "\$8000" insert the word "royalty".

Same page, line 23, the word "shipments" should be "statements".

Page 28, eighth line from bottom, correct spelling of "anybody".

Page 29, line 2, the word "redress," should be "results".

Page 33, last line, the word "patents" first occurrence, should be "license".

478 Page 23, line 2, correct spelling of the word "group".

Page 35, line 13, word "declared" should be "made".

Page 23, fourth line from bottom, words "the certificate of" should be "to certify to".

Page 37, seventh line from bottom cancel "to", second occurrence.

Page 39, second line from bottom after "owing" insert "to".

Page 40, line 17, correct spelling of "extent".

Last line, same page, "Magnetos in" should read "magneto on".

Page 56, first line, correct spelling of the word "defaulted".

Page 60, next to last line, "probably" should be "probable".

Page 67, line 12, "Licensee" should be "licensor".

Page 70, line 13, "issue" should be "issued. Line 25, "pre-issue" should be "reissue".

None of the above errors are material, but I am handing you four copies of this letter and would ask that you kindly mail one copy to each one of the parties who have received copies of the testimony.

Yours truly,

(Signed) H. R. VANDEVENTER.

Racine, Wis.
Nov. 3, 1913.
Letter #16.

Mr. H. R. Van Deventer,
Sumter, South Caroline,

•Dear Sir.—

Supplementing the letter of our Mr. Leeb dated October 30th, we are pleased to advise you that we presented your letter of the 27th, to our general consul, Mr. Williams of Brown, Williams, Bell, Hanson & Boettcher of Chicago, Illinois.

We are glad to learn through Mr. Williams that he had a very pleasant acquaintance with your people.

We thank you for the courteous tone of your letter and realize that it is always best to settle matters of this sort, amicably if possible. Mr. Williams is going into the matter carefully, and we hope to write you again very shortly in reference to this matter. It surely is not our intention to infringe any of your legal rights.

Yours very truly,

THE WEBSTER ELECTRIC CO.,

By (Signed) T. K. WEBSTER
President.

TKW:DP

480 A. I never met Mr. Brown personally, except at the Detroit gas engine convention, and was then introduced to him for the first time,—I think in 1914.

Q. Your answer doesn't cover the scope of my question. What I wanted to know was this: If at that meeting at Mr. Becker's office in Chicago, anything was said by anybody in reference to the fact that the Podlesaks had made any attack against the Webster Company or others, or not.

A. I don't remember hearing any conversation of this character.

Q. Did you know, as a matter of fact, from any representations made to you by Mr. Manning, or anybody representing your interests, that the Podlesaks were hostile to the Webster people and had made any threats or remarks derogatory against the Webster Company?

A. You mean outside of this meeting, at any time?

Q. Yes, sir.

A. I have gathered the impression from casual conversations from time to time, with the various people interested in

this matter, that the Podlesaks and the Webster people were not friendly, but I never heard the Podlesaks say that they were going to do anything to the Webster Company.

Q. I understood you yesterday to say that you were putting out more plug oscillators now than ever before?

A. We are beginning to put them out. We have not yet.

Q. If you are going into the plug oscillator field, it must be either that you think your plug oscillator is better or is cheaper, or can be supplied to the market cheaper than the Webster product.

481 A. We don't think it can be sold cheaper. We don't think it is sold as cheap as the Webster device, but it is better suited to a certain type of engine, for which the Webster device is not considered by the manufacturers of those engines to be suitable.

Q. Then you don't mean to say, as a matter of fact that it is better, but that it suits some people better.

A. It is better for the purpose for which it is intended. It is not intended to be used on the same type of engines as the Webster device.

Q. There is a market for it, and you are supplying that market at the present time?

A. Yes sir.

Q. I think you said that the plug oscillator did include the unitary plug and bracket idea?

A. Yes, that has been included in a number of devices shown in the prior art.

Q. And is included in your plug oscillator?

A. Undoubtedly.

Q. You have not learned yet how to make these plug oscillators cheaper than the Webster people make their plug oscillators.

A. Why, it is not the same device and there is no way to compare it in cost with the Webster machine, except as a whole. It is like trying to compare a Ford automobile with a Dodge. We have learned how to make it at a low cost, but I do not believe it is as cheap to manufacture as the Webster.

Q. You are in the employ of the Splitdorfs, I think you testified, at the present time?

A. Yes sir.

Q. And of course, whatever rights they got or claim to have gotten and claim the ownership of now, under the
482 agreement which took up that option, you would not hesi-

tate to advise to have exercised, if it was for the advantage in any way of the Splitdorf Company, would you?

A. Whatever I considered to their advantage, I would advise them to do if called upon for this advice, but I might say that I am not qualified to speak for the Splitdorfs, for I am neither an officer nor director of that concern, and nothing to which I might testify would be considered binding on them.

Q. My question was really directed towards your attitude as a practical man and employee of the Splitdorfs, running the Sumter Works of the Company and knowing the demands of the market and the general character of the products of the company, and in view of this statement by me, you would advise your company to take advantage of every right in these Podlesak agreements that the agreement had, to carry out its business to the best advantage, wouldn't you?

A. That would depend largely on the circumstances. I think the Splitdorf Company has rights in these contracts which can be enforced, such for instance as in case of a default by the Webster Company they could notify the Webster Company to cease manufacturing the devices covered by the patents, but I don't think under the present conditions of the trade, I would advise a drastic action of this kind, or that the Splitdorf Company would seek to enforce such a drastic measure.

Q. That is not within the scope of my question, but if it was necessary to enforce the right to default for the benefit of the Splitdorf business, as you see it, you would so advise, would you not?

A. Only in the event that the Webster Company was not able to take care of the trade, or became bankrupt, or something else happened to it of that nature. I don't think 483 if they got in hard luck and defaulted on account of temporary lack of money, I would advise the Splitdorfs to forthwith close down on them. I would advise this course only as a last resort, in the event that they could not take care of the gas engine trade, and in the event that they were to become bankrupt, through mismanagement or something of that sort.

Q. But you would feel that you were the judge of the circumstances which justify a default. You would not leave that to the Webster Company, would you?

A. I would take the statement of Mr. T. K. Webster or of Mr. Brown as to the affairs of that company.

Q. But as to the interference with your trade, if the Webster people tried to interfere with your putting out the plug oscillator, as you are doing and preparing to do, how then?

A. I do not think we would attempt to enforce anything under default of that reason.

Q. At the present moment you are perfectly satisfied if you can go on with your plug oscillator manufacturing and placing on the market; that would satisfy you?

A. Yes, together with the Webster Company continuing its business in an ever increasing and uninterrupted manner. We would like to see them do as much business as possible and pay as large royalties as possible.

Q. All this, you have stated above is directed as to the policy, which may be generous or not. I am not directing my question towards that feature of your business. What I wanted to know was whether you would hesitate to exercise any right which you have under these contracts, if it was for the advantage in any way of the Splitdorf Company.

484 A. Speaking personally, I would hesitate personally and give the matter very serious consideration before attempting to enforce the letter of these contracts to injure the Webster Company in any way. I would have to inform myself very fully as to conditions existing at that time in the trade and between the two companies.

Q. But if it was really for the advantage of the Splitdorf Company, after you had made such an examination, then you would exercise any right against the Webster Company?

A. If it were a clear-cut issue as to whether I would favor the Webster Company or the Splitdorf Company, I would naturally favor the Splitdorf Company.

Q. I am not asking you as to a question of favor, but a question of right; you would exercise that right?

A. I would advise that such a right be exercised.

Q. But what you want now, as I understand your previous answers, is to push so far as you can, the market for the plug oscillators: That is our present object, and not to declare a default against the Webster Company?

A. Our present policy, I believe is take in such business in the plug oscillator line as we are able to handle.

Q. And to that end, solicit the trade, so far as it will bring you the business you desire?

A. I think, or rather, I am informed that the trade is soliciting us. I think it is the other way about. We have had quite a number of people come to us who wanted this

device, and I don't think that the sales organization is making any very great effort to sell this thing. They are selling only where they are obliged to sell it.

Q. And you are selling in increasing numbers?

A. Getting ready to sell in increasing numbers.

Q. In response to this demand you have referred to?

485 A. Yes, sir.

Q. This preparation consists in methods of manufacturing, to the advantage of the company?

A. We have bought no new machinery. We have gotten new tools and gotten ready to manufacture this device.

Q. And the policy of any manufacturing plant is to produce as economically as possible to hold your customers who desire this particular device?

A. Yes sir.

Q. Now this meeting at the hotel in Chicago, on August 20th, 1915, extended over some considerable time, didn't it? Two or three hours?

A. I think so.

Q. And during those two or three hours you and Mr. Manning and Mr. Clements and the two Podlesaks talked over these contracts which the Podlesaks had brought in for you to consider, did you not?

A. Yes, but I don't think that both the Podlesaks were. If my recollection is correct, there was only one of them there, Mr. H. J. Podlesak.

Q. How long did you talk with him.

A. I think two or three hours.

Q. On one day only, or was there another meeting another day?

A. I think we only talked one day, but I am not sure about that.

Q. And only with Henry?

A. Yes, I think so. I don't remember that Emil was present.

Q. I think you said you were familiar with all the patent litigation that concerns your company, because you are a patent attorney, is that so?

A. Yes sir.

486 Q. And you produced a certain letter and asked to have it read into the record here, from T. K. Webster, which letter ante-dated by some years this purchase of the Podlesaks' rights. Is that true?

A. Yes sir.

Q. There is another letter that Mr. Webster wrote to which reference is made in the answer of the Splittdorfs and Sumter Company to the Chicago suit, which is put in as an exhibit to that answer. Do you remember that letter?

A. I think the letter you refer to is dated January 2nd, 1914, signed by T. K. Webster and addressed to me at Sumter.

Q. You remember receiving that letter at the time of its date?

A. Yes sir, I acknowledged receipt of that letter under date of January 15th, 1914.

Q. Referring again to the pleadings in the case for infringement brought in Charleston in the United States Court, had you read them over, and was it fresh in your mind at the time you went into that meeting on August 20th, 1915, or had you read it over at that time?

A. I don't remember, I don't think I had read those papers at all, because I don't think I had been back to Sumter and gotten copies of them.

Q. You knew the suit was pending, but had not familiarized yourself with the details.

A. Yes, I had received advice by wire that such a suit was pending.

Q. You have no complaint to make of the Podlesaks at the present time that they are not doing everything they should do to make good on that title?

A. No sir, we have no complaint to make. We never asked them to do anything. After the contracts were made, we were through with them.

Q. You don't mean you would dismiss them from any obligation they are under to make good?

A. I don't know what obligations they are under, except that they agreed to do certain things in connection with the patents they assigned, and aside from that obligation, I don't know of any obligation they are under to us.

Q. They had to stand by that title they sold you in any respect you wanted them to?

A. They guaranteed they had a right to sell when they sold.

Q. You have not paid them the last \$20,000 of that consideration, have you?

A. I don't know. That don't come under my jurisdiction.

Q. Then the attorneys would be the ones to tell the Podlesaks to make good or they wouldn't get that \$20,000?

A. I don't think the attorneys would do anything unless the company instructed them to do it.

Q. You have stated in a general way everything that you could recall as to what took place at the meeting when Henry Podlesak was present on August 20th, 1915. Have you any reason, since this examination has proceeded, from any refreshment of your memory due to this examination, to add any particulars as to any matters discussed, or then discussed?

A. No, sir, except that the most of the conversation at that meeting related to the patents, and our conversation with Mr. Podlesak principally turned on the technical questions involved in connection with these patents, and then we talked about the price he wanted and the probable income that we would receive, and the question of title was gone into and 488 he exhibited certain papers which showed that any prior contracts he might have made were merged in the three written contracts he wanted to dispose of.

Q. You took them at their face value?

A. We investigated all he showed us that passed between him and the Webster Company previous to that contract.

A. I think you said such investigation as you were making then and there in your discussion of the subject.

A. Yes, he exhibited other papers that he had, and we took them at their face value.

Q. Those were statements of the Webster Company as to payments of royalties?

A. I think he exhibited prior contracts, he had had or his brother had had, and some letters between him and the Webster Company.

Q. Were those contracts with the Webster Company and Emil Podlesak?

A. I don't know.

Q. I asked you yesterday and you said you didn't consider any contracts that Emil had with Webster; that you didn't consider it necessary to consider them. Now, do you wish to say that you did consider them?

A. No, I am trying to give you all the information I possess with reference to those Podlesaks, and they exhibited certain papers, or rather, Mr. Henry Podlesak did; I don't remember that Emil Podlesak was present; and we talked over those papers and discussed the bearing they had on the

contracts, and then we discussed it among ourselves, and we decided the prior agreements had been merged in the contracts, and we bought them. As to what those papers were, I don't recollect at this time. That has been two years ago and I have been very busy since then.

Q. Was anything said about the Charleston suit that 489 was pending?

A. I don't remember that that was mentioned, except perhaps in a casual way. I know that Podlesak knew about it, because he signed the Bill of Complaint.

Q. But you didn't know particularly about it. You hadn't examined it then.

A. No sir, I don't think that I knew what patent they were suing on.

Q. Was anything said about that letter you have referred to, dated January 2nd, 1914.

A. No, sir, I don't recall anything being said about that at all.

Q. At any time on August 20th, 1914?

A. No sir, I don't remember hearing anything said about it.

Q. I suppose you have no hesitancy in saying that what you were really after when you went up there, when you negotiated this purchase from the Podlesaks was whatever affected the unitary plug and bracket, so far as the question of infringement by your company in its manufacture of the plug oscillator, so called, was concerned?

A. No, I think we were more interested in finding the best way to quiet litigation of all kinds between the two companies.

Q. The only litigation was over this unitary plug and bracket between you?

A. That is all they had started at that time. We didn't know but what they might start something later on.

Q. Did you have a guilty conscience?

A. No, because we were not making anything. It was hard to tell what they might do.

Q. You wanted to put it out of their power to attack you in the future, whatever you did.

490 A. We wanted to protect ourselves in a perfectly legitimate way.

Q. Of course, and the present protection was protection from the plug oscillator litigation and anything else that might develop; is that true?

A. That was the reason, so far as that goes.

Q. That is what you were after?

A. There were other considerations.

Q. But you were after that?

A. That was the immediate pressing necessity at that time.

Q. Do you refer to anything else as other reasons, besides what you have already mentioned in this examination?

A. No, I think they were all mentioned yesterday.

Q. I want to call your attention particularly to an Exhibit C, which you examined yesterday, and to a certain clause thereof, which I will now read.

491 "Sixth: The party of the second part agrees that it will on the day of each and every report pay to the parties of the first part, jointly, as a royalty or license fee, five per cent (5%) of all moneys or the equivalent thereof, which they may have received, or that may be due them from the sales of or in exchange for the said devices sold and delivered during the preceding quarter. It is further expressly understood and agreed that the said devices manufactured embodying above improvements, or any of them, are not to be sold for less than a fair and reasonable price, based upon manufacturing and trade conditions."

Q. The question is: Do you remember that there was any discussing at that meeting with Podlesak on August 20th, 1915, with reference to this section which I have just read you?

A. No sir, I don't remember any.

Q. I wish also to call your attention to Exhibit D which you examined yesterday and will read to you therefrom the following:

"And the parties of the first part" (and referring back to the beginning of the agreement, the parties of the first part are Emil Podlesak and Henry Podlesak) "agree that they have good right and lawful authority to grant said shop right and license, and that they have not heretofore parted with any right license or privilege inconsistent therewith, and that they will not, while this shop license to the party of the second part is in force, give or grant shop licenses to others to make, use, or sell herein said inventions."

Now, having called your attention to this, the question is whether the contradictory nature of that language was discussed in this respect,—that first it purports to say that they

will not grant a license to other parties, and in the same sentence with the words "expressly reserving however the right to themselves to make, use and sell the herein said intentions". Was the contradictory nature of this part discussed?

A. I remember discussing that matter. We don't agree with you that the language is contradictory.

Q. I don't mean to commit you to that. I want to know what was said.

A. I think the purpose was to grant a right to the Webster Company but reserve the right to the Podlesaks, assignable by them, so that really any two people, or two concerns, or two groups of people could make use of that invention; the Webster Company, on the one hand, and the Podlesaks on the other. The Podlesaks were entitled to call in all the labor and capital in the world and go to work on those inventions.

Q. That was the conclusion you reached?

A. Yes sir.

Q. Calling your attention to the same contract, Exhibit D, I will read to you the second paragraph;

493 "Second: The parties of the first part" (and the parties of the first part are the Podlesaks and the second part the Webster Electric Company) "agree to and with the party of the second part that they, and each of them will aid and assist each other in the prosecution of said applications and the obtaining of patents thereon and in any interference proceeding relating to their right or priority to said inventions, and in any suit or proceeding brought under any of the said patents or for the infringement of any patents by reason of the manufacture, use or sale, by the party of the second part of the inventions described in said patents or applications; provided, however, that said parties of the first part shall not be called upon to pay out or expend any money in any suit or proceeding relating to the said inventions, and the parties of the first part hereby appoint the attorney for the party of the second part as their agent and attorney for the purpose of joining them as parties complainant where necessary or desirable, in any suit which the party of the second part may wish to bring on account of the infringement of any of said Letters Patent."

Q. Was that particular language discussed at that meeting with the Podlesaks on August 20th, 1915.

A. It was, and we understand that this was very properly put into the contract, because the licensee could not handle

any of the matters in the patent office in connection with these patents. It was necessary under the law, for him to have the co-operation of the patentee and it was necessary, under the law, for the patentee to join the licensee in any suits for infringement. He was forced to do so.

Q. And if it was necessary to use the Podlesaks for that purpose you would have a right to do so when you bought that contract?

494 A. I don't think we could use the Podlesaks in that connection, because what we bought was the absolute title to the patents, and having once acquired this, we were free from the Podlesaks so far as being required by law to have them join us. The assignee of the whole title could sue, but a mere licensee could not do so.

Q. And when you got the suit in Charleston dismissed, that was the way you did it, by using the Podlesaks on the other side from the Webster Company?

A. We merely withdrew from the licensee the power of attorney in that particular case, as I understand it, where he was suing his own licensee. I think that was an impossible legal proposition, although I am not competent to speak on that point.

Q. And that right would rest in the language I have just read to you, as well as in the law as you have just stated?

A. I don't know whether the right rests in that particular contract or not,—the contract between the Podlesaks and the Splitdorf Company, but I know the attorneys advised that we had such a right and we exercised it.

Q. Calling your attention to another part of Exhibit D, being paragraph six thereof:

495 "Sixth: The party of the second part" (and that is the Webster Company) "agrees that it will, except as hereinafter provided, use the devices manufactured under this shop license only in connection with, or for repairs to, the devices manufactured under license which is covered by the agreement made on February 5th, 1914 by which the parties of the first part" (the parties of the first part are Henry and Emil Podlesak) "give to the party of the second part the exclusive and sole right to manufacture ignition devices covered by patents No. 947,647 of January 25, 1910, Inductor Generators for Ignition purposes, No. 948,843, issued February 8, 1910, Inductor Generators for Ignition purposes, and No. 1,003,649, issued September 19, 1911 Inductor Generators for Ignition purposes", (and here please understand the num-

bers refer to the first group of patents, having the exclusive right to make, use and sell) "and that whenever the devices covered by this shop right and license are made and sold and delivered not as a part, or, or for use in connection with, the devices manufactured and sold under the aforesaid exclusive license dated February 5th, 1914, then the party of the second part agrees that it will on the day of each and every report pay to the parties of the first part, jointly as a royalty or license fee, five per cent (5%) of all moneys or the equivalent thereof, which they may have received or that may be due them from the sales of or in exchange for the devices covered by this shop right and license sold and delivered during the preceding quarter. It is further expressly understood and agreed that the said devices manufactured embodying above improvements, or any of them, are not to be sold for less than a fair and reasonable price, based upon manufacturing and trade conditions."

496 Q. Was that particular language referred to and discussed at this meeting of August 20th, 1915?

A. No, sir, I don't think it was.

Q. Calling your attention to a further paragraph of this same contract, Exhibit D, of shop right contract, so called, between the Podlesaks and the Webster Company, being paragraph 9 thereof, I will read to you:

"Ninth: The party of the second part" (the Webster Company) "agrees that it shall not permit or encourage other parties to manufacture, use, or sell devices covered by hereinbefore mentioned patents or patents that may be granted on hereinsaid applications, or any of them, except as, and on terms and limitations hereinbefore set forth, relative to said shop licenses under patents No. 1,022,642 and No. 1,055,078."

Was that particular language discussed on August 20th, 1915?

A. I think that was discussed in a general way. We understood that to mean that the Webster Company was not to encourage anybody to infringe the patents under which they were licensed.

Q. And that is the construction which was put upon it at the discussion which you have referred to?

A. I think so.

Q. That is the way you recall it?

A. Yes sir.

Q. There is another exhibit, E., annexed to the Bill, being

an agreement called a supplemental agreement between the Podlesaks and the Webster Company, and I think you stated yesterday when your attention was called to it, that that agreement was considered in connection with the Exhibits C. and D., being the exclusive royalty agreement and shop right agreement, so called; is that so?

A. Yes sir.

497 Q. Have you, Mr. Vandeventer, or your company, so far as you know, had any negotiations with the Podlesaks with reference to any other patents or applications therefor, other than those specified and covered in the agreements with the Webster people and comprised in the option to Mr. Manning, since the time that that option was taken in August, 1915?

A. Yes sir.

Q. Does that cover a plug oscillator device, or claim to cover it?

A. No sir, I don't think so.

Q. Please state what it is.

A. Mr. Podlesak wrote me concerning some issue patents. I don't recollect the price at which he wished to sell, and I examined those patents and believe I wrote him that we were not interested in them and that terminated the correspondence. I think it related to ignition systems, or perhaps magnetos.

Q. Did it have anything to do with the plug oscillator?

A. No sir, not that I recollect.

Q. Or any improvement on the same?

A. No sir.

Q. Or did it in any way come into interference with it in any way, form or shape, as you suppose?

A. No sir, I think those patents were all prior to the pre-issue patent on the unitary bracket structure.

Q. So, at the present time, you are not in negotiations with the Podlesaks with respect to the patents?

A. No sir.

Q. You may explain, if you so desire, what you understand to be the respective properties of a magneto called rotary, and a magneto called oscillating.

A. A magneto is a small electrical generator having a permanent magnet field in which is positioned a movable
498 part known as an "armature" or "rotor". It is customary to designate a magneto in which the movable part is adapted to be continuously rotated as a "rotary mag-

neto". Such magnetos are shown on pages 4 to 15 inclusive of the booklet entitled "1915 Sumter Magnetos".

An oscillating magneto usually has an arm or finger projecting from the rotary part, which is adapted to be engaged by a moving part of the engine and pulled to one side and released, whereupon springs connected to this arm cause the arm and the moving part of the magneto connected therewith to violently oscillate. Such machines are the same as rotary magnetos and are commonly of the type shown on page 16 of the booklet just referred to, in which it will be observed illustrated the machines shown on pages 4, 12, 13 and 14 of the booklet with the addition of the extending arm and the springs.

Q. When did the negotiations begin with the Podlesaks for the purchase of their interests?

A. I recollect having been told by Mr. Manning that these negotiations began some time prior to the starting of the Charleston suit.

Q. And probably some months before, as near as you can tell now?

A. Probably.

Examination adjourned until four o'clock, Tuesday afternoon, at four o'clock for signing the testimony.

499

PLAINTIFF'S EXHIBIT 83.

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Webster Electric Company,
Plaintiff,

vs.

Henry Joseph Podlesak, Tesla Emil
Podlesak, Sumter Electrical Com-
pany and Splitdorf Electrical Com-
pany,

Defendants.

In Equity
No. 553.

NOTICE.

Lynn A. Williams, Esq.,
Attorney for the Plaintiff,
719 Monadnock Block, Chicago.

Sir:—

Please take notice that the Splitdorf Electrical Company

of New Jersey and the Sumter Electrical Company of South Carolina, Henry Joseph Podlesak and Tesla Emil Podlesak, hereby withdraw the notice served upon the Webster Electric Company on or about October 23rd, 1915, in relation to defaults, demands, etc., pursuant to the terms of certain contracts mentioned in the Bill of Complaint.

And please take further notice that any and all claims of forfeiture by reason of any defaults on the part of the Webster Electric Company under any or all of the contracts aforesaid, the said Splitdorf Electrical Company, Sumter Electrical Company, Henry Joseph Podlesak and Tesla Emil Podlesak are hereby expressly waived pendente lite, upon condition that the sums of money falling due under the terms of said contracts by way of royalties shall be by the 500 Webster Electric Company ascertained bona fide as near as may be and within the times mentioned in the said contracts and paid over and delivered in cash, to be held for the defendant or defendants herein, said payment to be made to Henry J. Podlesak.

And if the plaintiff shall object, in writing to be served upon Charles C. Bulkley, Esq., forthwith, to paying the said monies over to Henry J. Podlesak for all of the defendants, or any of them as aforesaid, and the attorneys for all of the parties do not forthwith agree upon some other suitable person to receive the funds, then and in that event the said funds to be paid over to such person as may be indicated by the Court upon the application of any party hereto.

Upon the determination of the above entitled cause by final order or otherwise in the District Court in which the same is now pending, the waiver herein contained to cease and expire and thereupon the ascertainment of the true and just amount of royalties thereafter to become due shall proceed in all respects as if this notice had not been given, but no forfeiture because of any previous conduct shall be claimed.

SPLITDORF ELECTRICAL COMPANY OF N. J.

By CHARLES C. BULKLEY,

H. D. MOISE,

EDWARD E. CLEMENT.

SUMTER ELECTRICAL COMPANY OF SO. CAR.

By CHARLES C. BULKLEY,

H. D. MOISE,

EDWARD E. CLEMENT.

HENRY J. PODLESAK

TESLA EMIL PODLESAK

501

Chicago, Ill., Sept. 28, 1916.

Lynn A. Williams, Esq.,
Attorney for the Plaintiff,
1315 Monadnock Block, Chicago.

Sir:—

The above being a true copy of a notice executed by the undersigned and delivered to you on or about November 20, 1915, in the above entitled cause, we respectively request that the name Splitdorf Electrical Company be substituted for the name Henry J. Podlesak in the last line of the second paragraph of the aforesaid notice, and we request that all future payments made under the aforesaid notice be made to Splitdorf Electrical Company instead of Henry J. Podlesak, and we hereby approve and ratify the action of the Webster Electric Company in making its payment, due July 15, 1916, to Splitdorf Electrical Company instead of Henry J. Podlesak.

SPLITDORF ELECTRICAL COMPANY OF N. J.

By CHARLES W. CURTISS,
Genl. Mgr.

(Seal)

SUMTER ELECTRICAL COMPANY OF SO. CAR.

By

HENRY JOSEPH PODLESAK

TESLA EMIL PODLESAK

Correct Attest

M. W. BARTLETT

Secretary

Above instrument dated and delivered to Mr. Williams for Webster Electric Co. by me, and rec'd from him their check #1553 this Sept. 28, 1916.

GEORGE H. PEAKS
For Splitdorf & Co.

ABSTRACT OF

Minutes of a Special Meeting of the Board of Directors
of the

Splitdorf Electrical Company

held Thursday, December 9th, 1916, at 11 o'clock A. M.

Upon motion duly made and seconded it was

Resolved that Carlos W. Curtiss, as General Manager of the Splitdorf Electrical Company of New Jersey, shall be and he hereby is placed in general charge of the business of the said company with full authority to execute on behalf of the said company all contracts, other than commercial paper, that may be required or necessary in the conduct of the business of the said Company.

Correct Attest

M. W. BARTLETT

Secy.

(Seal)

ASSIGNMENT.

Whereas, Sumter Electrical Company, a corporation organized under the laws of South Carolina, entered into a written agreement on or about September 4, 1915, in which Emil Podlesak, of Racine, Wisconsin, and Henry Joseph Podlesak, of Chicago, Illinois, were parties of the first part and Splitdorf Electrical Company, a New Jersey corporation, and said Sumter Electrical Company were jointly parties of the second part;

And, whereas, on September 8, 1915, said Sumter Electrical Company executed a written agreement to assign all its rights arising out of or flowing from said agreement entered into on or about September 4, 1915, to said Splitdorf Electrical Company;

And, whereas, the said Sumter Electrical Company is in process of dissolution pursuant to the laws of South Carolina,

And, whereas, it is provided in Volume 1 of the Civil Code of South Carolina, for the year 1912, at page 771, Section 2815, as follows:

Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to set-

tle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them; they shall have power to meet and act under the by-laws of the corporation and under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of sale of such property, and may sell all or any part of cash, 505 or partly on credit, or take mortgages and bonds for part of the purchase price, for all or any part of said property.

And, whereas, Charles T. Mason, Harry R. Van Deventer, and Frederick C. Manning, were members of the Board of Directors of the said corporation at the time it surrendered its charter and begun to dissolve as a corporation, and the said Charles T. Mason, Harry R. Van Deventer and Frederick C. Manning, constituted a majority of the Directors of the said corporation at that time, and thereupon became trustees of the said corporation and entered upon the charge of their duties as such trustees pursuant to the terms of the statute law of South Carolina.

Now, Therefore, in consideration of One Dollar (\$1.00) and other valuable considerations, the receipt of which is hereby acknowledged, the said Charles T. Mason, Harry R. Van Deventer and Frederick C. Manning, they being a majority of the trustees of the said corporation, do for themselves and for the said Sumter Electrical Company, hereby assign, transfer, set over, and deliver unto the said Splitdorf Electrical Company, all of the rights of the said Sumter Electrical Company, and of themselves as such trustees, arising out of or flowing from the said agreement entered into on or about September 8th, 1915, and also all of the rights of the said Sumter Electrical Company and of themselves as trustees arising out of or flowing from a certain writing executed by Emil Podlesak and Henry Joseph Podlesak at the City of Washington in the District of Columbia on the fourth day of September, A. D. 1915, and also afterward executed or to be executed by the said Sumter Electrical Company and the said Splitdorf Electrical Company, this being the agreement referred to in the first paragraph hereof.

506 In Witness Whereof, the said Charles T. Mason, Harry R. Van Deventer and Frederick C. Manning, trustees,

have executed this assignment at Sumter, South Carolina, this 26th, day of September, A. D. 1916.

CHARLES T. MASON
Trustee
HARRY R. VAN DEVENTER
Trustee
FREDERICK C. MANNING
Trustee

State of South Carolina }
County of Sumter } ss:

We, CHARLES T. MASON, HARRY R. VAN DEVENTER, and FREDERICK C. MANNING, trustees for the said Sumter Electrical Company, being first duly sworn, depose and say, that we have full power to make and execute the foregoing assignment on behalf of Sumter Electrical Company and that the execution of said assignment is our free act and deed on behalf of ourselves individually and of said Sumter Electrical Company.

CHARLES T. MASON
HARRY R. VAN DEVENTER
FREDERICK C. MANNING

Sworn to and subscribed before me September 26th, A. D. 1916, at Sumter, South Carolina.

(Seal)

R. A. BRADHAM
Notary Public in S. C.

508

DEFENDANTS' EXHIBIT NO. 1.

Waterman Letter Feb. 16, 1909.

UNITED STATES DISTRICT COURT

Northern District of Illinois,

Eastern Division.

2/19 Mr. Waterman

Webster Electric Co.

vs.

Henry J. Podlesak *et al.*

} In Equity No. 553

Milwaukee Works, February 16, 1909.

2 sheets

Magnetos.

Experimental Department,

Harvester Building, Chicago.

Gentlemen:

The Wattles Magneto: The Wattles magneto delivered to us at Milwaukee on the 26th of January, has now been given test of sufficient variety and duration to warrant preliminary report. Mr. Wattles personally was with us at this plant for several days late in January. He demonstrated and explained operation as intended by him, clearly and completely. The design of the Wattles magneto, operated primarily by means of gases under compression before ignition regulated by suitable mechanical attachment to ignitor-rod, is clever to say the least, and all points considered, except perhaps with reasonable question as to durability, there seems to be little doubt why it cannot be constructed so as to be reasonably practical for manufacture.

These two samples we have had on trial, as might naturally be supposed of the first of new product, have not shown themselves to be of proper proportion and of sufficient strength to stand up at all well under the wear and tear of continuous use. So far as doing good work electrically is concerned however, up to that point when breakage has occurred, although the spark has been weak, probably because of winding not just suitable, the magneto has given indication of fulfilling its bill nicely. Its general construction has these decided ad-

vantages: It can be quickly and satisfactorily attached to engines in the country; it works only at the time of an explosion; it consumes very little power for its operation; and its cost to manufacture in quantity, should not much exceed \$4.00 or \$5.00.

If this Wattles magneto is to be considered suitable for use on our engines, it must be completely re-designed. Its parts must be made stronger,—and possibly these parts can be made of different form, and less in number, and at the same time give results desired. Mr. Wattles has stated that he would like to have us experiment with this mechanical construction here at Milwaukee, and suggest a form which would be satisfactory to us and yet contain his general principle. We have begun work accordingly, and are now making such alterations as we think will be necessary for satisfactory service and proper report on this subject.

HAW-G

509 Electrical Department.

February 16, 1909.

Magnetos in General: It may be worth while to add that after considerable study of this general question, we are not by any means satisfied we have yet found a magneto entirely satisfactory from the standpoint of manufacture or of service free from trouble. The Milton magneto when new and properly adjusted, works nicely. Its general form and the way in which it is attached to the engine however, demanding as it does, small clearance and an excessive torque for its operation, causes it to be very easily worn or shaken out of adjustment. The moving parts soon wear considerably, and when once in this condition, service is very unsatisfactory. We take for granted the Webster people without further delay, will take energetic steps to strengthen such parts as are not sufficiently strong or secure, for work intended; that they will consider the value of eliminating action except on the explosion stroke, if this result can be obtained without unreasonable complication, and that they will reduce the amount of power at present required for operation. Until such change has been made, and magnetos come to us in such form as to stand up well under service required, they hardly can be considered satisfactory.

The Wattles magneto, on first glance, looks well. There is reasonable question however, as to whether or not a rapidly moving piston of small size in the long run will be sufficiently durable to be sure to be free from trouble, and prove satisfactory in the hands of the average farmer. There is not

much question that so long as this piston does work properly, and parts intermediate between it and the rotary part of the magneto are suitably proportioned for work intended, the outfit will work well. But whether or not this Wattles magneto will be considered best for use on our regular line of engines, will depend upon the way in which it will compare favorably with the Milton magneto, or perhaps some form similar to either one of these two, after both the Milton and the Wattles magnetos have been improved in design and construction considerably. Feeling sure these statements are correct, personally I am rather inclined not to recommend too much haste in decision of this question of judgment on magnetos. At least we should not make any change from our present practice until we are thoroughly convinced that the magneto to be adopted will be efficient and durable in every particular, and can be manufactured at low cost,—preferably at this plant. We will continue to study this subject carefully, and will report further as soon as we have data of real value to parties interested.

Yours very truly,
INTERNATIONAL HARVESTER COMPANY
Milwaukee Works.
H. A. WATERMAN

HAW-G

510

DEFENDANTS' EXHIBIT NO. 2.

U. S. DIST. COURT,
Northern Dist. of Illinois
Eastern Division.

Webster Electric Co. }
vs. } In Eq. No. 553.
Henry J. Podlesak *et al.* }

"Waterman letter to Maurice Kane Apr. 6 1909"

April 6, 1909.

Mr. Maurice Kane.

Drawings have been completed showing arrangement for attaching one additional drum to the frame of our present 8 HP hoisting outfit, to better adapt this rig for pulling stumps, and work on small patterns has been started for the construction of one of these outfits.

Preliminary sketches have been made in preparation for designing spray pumps to be manufactured at this plant.

Drawings have been completed and patterns are well under way on the following:

3 HP Hopper-Cooled Cylinder, to be used on the regular 3 HP air-cooled frame.

6 HP Hopper-Cooled Cylinder, for use on the regular horizontal engine frame of same rating.

The 8 HP sliding table saw truck is nearly completed. The 4 HP hopper-cooled engine has been mounted upon one of the regular tilting table saw trucks, arranged to have balance-wheel on saw-arbor or on shaft separate from saw-arbor, as desired. Both of these outfits will be ready for test within ten days.

Parts for the new 25 HP horizontal engine have been completed and the engine soon will be ready for test.

Parts for the 35 HP plowing tractor are coming forward in good form, and conditions to date indicate we shall be able to have this engine ready for test about the 1st of May, as first promised.

Work is under way perfecting the durability of the Wattles Magneto, and considering some better means of attaching the Milton Magneto to engine.

The results of the regular routine of experimental work seem to be entirely satisfactory.

Yours very truly,
INTERNATIONAL HARVESTER COMPANY,
Milwaukee Works.

H. A. WATERMAN,
Superintendent.

HAW-K

511 DEFENDANTS' EXHIBIT NO. 4.

"T. K. W. letter to Milton, Apr. 16 09"
Union League Club,
Chicago.

U. S. DIST. COURT
North Dist of Illinois
Eastern Division

Webster Electric Co. }
 vs. } In Equity No. 553
Henry J. Podlesak }

Apr. 16—09

Dear Milton

Mr. Tyson telephoned that the International would send Engine over to our place—I wish you would arrange to take a/c of stock of material on hand May 1st also complete list and prices of tools in your Igniter Dpt— Please write me at N. Y. 88 Reade St how the small sized magneto carries on—if you get a good spark?

T K W

523 DEFENDANTS' EXHIBIT NO. 15.

Webster M'f'r Co.,
88-90 Reade St., T.K.W.—W.
New York, N. Y.

Apr. 22, 1909.

Mr. John L. Milton,
% Webster M'fg. Co.,
Chicago, Ill.

Dear Milton:—

I have apparently succeeded very well here. I have got a man who is interested, who owns control of the Maxwell-Brisco Company. They are putting out 6,000 or 7,000 a year, and from all the reports I can hear, he is our kind of a man; he is a banker, and it is reported he has got the money. All of the experts which he has put on it so far have reported favorably.

Our arrangement is that I shall come back next week with a machine and put it on the Maxwell-Brisco car of his here in New York, and if after one weeks trial it is satisfactory, he will accept our proposition.

Unless you are right in the midst of work that you cannot stop, or if it is going to hinder your work really, I wish you would meet me at the Michigan Central Depot, 12th St. & the Lake, at 3:30 P. M. Friday which is the time, the train is due, which leaves here today oat 4:30, and I can at once take up with you the whole situation. If you find that it is going to delay important work, I wish you would hand this letter to Bob Brinkley, and have him meet me.

Yours truly,

T. K. WEBSTER

512

DEFENDANTS' EXHIBIT NO. 5A.

(Letterhead of Hotel Seville, New York)

Dear John

Had a very interesting interview with Mr. Hill of "Fairbanks." Also interviewed the Prest. Mr. Wells—Mr. Haddock—and two of their foreign representations. If the attachment of the # magneto proves out alright on Field B tho will put it on all their engines— They will have Bates & Edward send one of their engines to put the spring type on—

The other style back of fly wheel was so hard to start that
513 they has not been selling any We must follow up both of them as soon as possible

Yours truly

T. K. WEBSTER

Pres.

May 1—09

518

DEFENDANTS' EXHIBIT NO. 10.

Webster M'f'r Co.,
88-90 Reade St.,
New York, N. Y.

T.K.W.—W.

May 1, 1909.

Mr. John Milton,
% Webster Mfg. Co.,
Chicago, Ill.

Dear Milton:—

I want you to use every effort you can to get a magneto on your car, for I think it is quite possible that I will bring the party out to Chicago very shortly, and should not like to have them find your machine dismantled without the magneto.

Yours truly,

T. K. WEBSTER
Prest.

519

DEFENDANTS' EXHIBIT NO. 11.

Webster M'f'g Co.,
88-90 Reade St.,
New York, N. Y.

T.K.W.—W.

May 6, 1909.

Mr. J. Milton,
Webster M'fg. Co.,
Chicago, Ill.,

Dear Milton:—

Chiville arrived here, and will proceed at once to get the magneto on the car. We found the gear on the end of the timer shaft so that we got on the driving mechanism very easily. The exhaust pipe was in the way, and we had to send to Tarrytown for a different type, which we expect to arrive by express this morning.

The most serious difficulty that we are encountering is in getting the connecting rod on the magneto from the steering column. We have to make two bends which makes it rather awkward. Chiville tried to use the rod he brought with him, but it was too light, and now we are putting in a heavier one. If we should find this really a serious difficulty, it is possible I may wire you to ship your car by express. I hardly

think I shall have to do this, and would only do so as a last resort.

I have your letter regarding the Bates & Edmond proposition. We have got to go down and see these people, and get them interested again. Fairbanks are now going to help us all they can. It might be possible that we will dispose of the old style later on.

Yours truly,

T K WEBSTER
Pres

Chiville just telephoned he got the connection fixed O K

520

DEFENDANTS' EXHIBIT NO. 12.

Webster M'f'r Co.,

88-90 Reade St.,
New York, N. Y.
T.K.W.—W.

May 8, 1909.

Mr. John Milton,
Chicago, Ill.

Dear Milton:—

I wish you would advise me just how you are getting on with the smaller type of magneto, and also if you have done anything further in developing the coil.

I believe the magneto is appreciated more here in New York than in Chicago. I have written you in another letter the details. We are going out again this afternoon about three o'clock.

I do not consider that the magneto has yet had a fair chance, because of the carburetter trouble, but the man who is running the car is a old, experienced automobile man, and he does not blame the magneto for anything the carburetter does.

I wish you would reply to these questions so it will get on the 20th Century Monday and get to me Tuesday, for I have a faint hope that I might be able to start back the middle of the week, although it is not a very strong expectation.

Yours truly,

T K WEBSTER

521 DEFENDANTS' EXHIBIT NO. 13.

Webster M'f'r Co.,
88-90 Reade St.,
New York, N. Y.
T.K.W.—W.
Webster's M'fg Co.,
Att. John Milton,
Chicago, Ill.

May 8, 1909.

Dear Sir:—

Regarding the magneto. We went out yesterday and gave the car another trial. The car was not equipped with a speedometer, and that took some time yesterday to put it on. The car also has a new Strongberg carburetter on, and the Chauffeur is not acquainted with it resulting with our having a lot of carburetter trouble, but he magneto behaves handsomely, and up to the present time everybody is well pleased with it.

Chiville is turning out a very valuable and efficient man.

Yours truly,

T K WEBSTER
Pres

522 DEFENDANTS' EXHIBIT NO. 14.

J-L-M

5-10-1909.

Mr. T. K. Webster, Pres.
Webster M'f'g Co.,
New York City.

Dear Mr. Webster—

I have your two letters of the 8th inst. and in reply thereto desire to state that we have ordered dies for the smaller type of low tension magneto which is to be used on the Harvester work. The smaller type magneto for jump spark work has been necessarily side-tracked for the various interruptions. Just prior to taking our inventory we had to concentrate our attention on getting the equipment ready for Mr. Chiville. The inventory was a serious interruption and since then we have been very busy attending to the Harvester Co.'s demands. They have gotten intensely impatient, telephoning several times a day as well as telegraphing us from Milwau-

kee. This has all been supplemented by many letters so you can readily see why we have concentrated our attention to this live business. We expect to make shipment to-day that will satisfy their immediate demands, which will allow us to go back to the high tension magneto tomorrow. I have done nothing further on the completion of the small high tension coil.

I am pleased to note from your various communications that the magneto is working satisfactory.

Yours very truly,

JNO. L. MILTON

514

DEFENDANTS' EXHIBIT NO. 6.

UNITED STATES DISTRICT COURT.

Northern District of Illinois

Webster Electric Company	} Equity No. 553
vs.	
Henry J. Podlesak <i>et al.</i>	

J.L.M.—L.K.

May 21, 1909.

Mr. T. K. Webster,
New York City.

Dear Mr. Webster;—

We are today in receipt of a letter from Bates & Edmonds Motor Co., advising us that Fairbanks & Co. had asked them to send us an engine, for attaching our oscillating type of magneto. We are writing them to send it at once as we can give it immediate attention.

I am writing you today to urge your getting the Fairbanks Co. to take the 150 magnetos that we have made especially for their small vertical engine, for the reason that as soon as they see this oscillating type of magneto they will not consider this old type, whereas now they very probably would, especially if we quote them a low price. I would recommend going as low as \$5.00 or \$6.00. This would enable the to use the battery for starting and then switch over to the magneto. You probably know that this magneto has proven thoroughly satisfactory to them with the single exception of the starting. It is as permanent and durable as

a magneto can be made with the present knowledge of it so it will not be offering them an inferior article. Soliciting your careful consideration to the above, I am

Yours very truly,

J L M

516

DEFENDANTS' EXHIBIT NO. 8.

Webster M'f'r Co.,
88-90 Reade St.,
New York, N. Y.
T. K.W.—W.

May 21, 1909.

Webster M'fg Co.,
Att. John M. Milton,
Dear Milton:—

I called at the Garage today, and I find that Chiville did not fasten the rod that works the magneto, securely enough, and that this came out. They are putting on a new one and are having some difficulty in getting it to swing sufficient to spark from the seat.

Mr. Toner also reports that he was out in a shower, and that while the wiring did not get thoroughly wet, yet it effected the magneto quite a little, making it miss. I thought best therefore, to wire for Chiville to come on, because there are various questions which will undoubtedly come up which I will need advise and help on.

Yours truly,

T K WEBSTER

515

DEFENDANTS' EXHIBIT NO. 7.

(Letterhead of Webster M'f'g Co.)

Dictated by T.K.W.—W.

New York, U. S. A. May 22, 1909.

Mr. John Milton,
Webster M'fg Co.,
Chicago, Ill.

Dear Milton:—

Chiville arrived on time, and I find that what happened was where he attached the rod to the magneto. This connection gave way, and when they put it on again attaching it to the regular place to attach it, they could not get sufficient swing

to get started from the seat. This we are remedying today. I also received the foreign patents in the hands of Chiville.

Am glad to know that the Harvester magneto has been expressed.

I have just seen Mr. Knight, and he tells me that they are intending to put the magneto on a 45 HP car. Chiville has expressed himself as being afraid that our magneto will not serve a 45 HP car. I had always supposed that our magneto was plenty big enough for any car. Do you think Chiville is right? Answer me by 20th Century.

Yours truly,

T K W
President.

517

DEFENDANTS' EXHIBIT NO. 9.

J-L-M

5-24-1909.

Mr. T. K. Webster, Pres.
Webster M'f'g Co.,
New York City.

Dear Mr. Webster:—

I have your letters of the 21st and 22nd inst. Mr. Toner's experience with the car in the rain, is nothing out of the ordinary for any Jump Spark system. The dampness does not affect the magneto itself, the whole trouble rests with the high tension wiring. This as you probably know is the most serious objection to any high tension or jump spark system, and it is for this reason particularly that the low tension system is the most reliable. I know of no reason why the Magneto that you have will not answer for a 45 HP motor. It has been my experience with stationary engines that the bigger the cylinders and the higher the horse power, the easier it is for the magneto.

Yours very truly,

Jno L. M.

526

DEFENDANTS' EXHIBIT NO. 22.

(Letterhead of Webster M'f'g Co.)

Dictated by T.K.W—LK.

Chicago, Oct. 25, 1909.

Mr. John L. Milton,
American Express Co.
#6 Haymarket,
London, W. C.

Dear Sir;—

I went out to the Harvester Co. today and find that they have been having very poor success indeed in the foreign trade with the Milton magneto of the square type attached by the boss to the engine.

We received, a short time ago, a letter containing twelve counts against this machine. They are greatly discouraged about it. In fact, they were ready to abandon it, had not Mr. Cavanagh sent them a cable last week, advising them that the new machine had overcome all the objections they spoke about in the old one.

I think if you wish to retain the foreign trade for the Milton magneto, it would be well for you to go over to Hamburg, and see Mr. W. V. Couchman.

We are sending him, by express today a model of the low tension machine as it is now adopted by the Harvester Co. They have been delayed in making shipments of engines with the magnetos, though I believe they now have two or
527 three on the ocean and more are going through. The delay has not been our fault but the fault of the factory at Milwaukee in not getting out the attachments promptly.

Yours very truly,

T K WEBSTER
Pres.

528

DEFENDANTS' EXHIBIT NO. 22A.

Novr. 10th 1909.

W. V. Couchman Esq.,
c/o The International Harvester Coy.,
Hamburg.

Dear Sir,

On my return from the continent this morning I find a letter from the Webster Mfg. Coy. Chicago, advising me that

you have had some serious trouble with the attachments of our square type of magneto, also that Mr. Cavanaugh of the International Harvester Coy. Chicago, had advised you that the present method of attaching our magneto to your engines had entirely overcome all of the objections set forth in your past letters. I am also further advised that the Webster Mfg. Coy. have forwarded to you a working model of our magneto as attached to your horizontal engines.

After you have received the above model, if you are not then entirely convinced that the troubles referred to are not completely overcome, or that there are any further changes you would like to consider with me, or still further if there is any assistance that I can personally render you, I shall be pleased to call on you at your Office.

Awaiting your advices, and thanking you for the assistance you have rendered us, and the interest you have taken in our magneto, I am,

Yours very truly,
JNO. L. MILTON.

529

DEFENDANTS' EXHIBIT NO. 22B.

Novr. 10th 1909

Mr. T. K. Webster, President,
Webster Manufacturing Coy.,
2410 West 15th Street,
Chicago, U. S. A.

Dear Sir,

On my return to London this morning I find a letter from you under date of Octr. 25th.

I wish to thank you for same, and in connection with this matter desire to state that I have to-day written Mr. Couchman at Hamburg regarding my calling on him.

I trust that the Milwaukie Works are not having any further trouble with the attachments for magnetos. I have felt a certain amount of uneasiness regarding their making these attachments correctly, due to the fact that they made the old style ones with very bad workmanship, which I believe is the principal trouble that Mr. Couchman is experiencing now.

Yours very truly,

530

DEFENDANTS' EXHIBIT NO. 22C.

(Duplicate of Exhibit No. 22C.)

551

DEFENDANTS' EXHIBIT NO. 30.

(Letterhead of Brown & Williams, Attorneys.)
Chicago, Sept. 10, 1910.

Mr. John L. Milton,
C/o Webster Electric Co.
Tiffin, Ohio.

Dear Sir:—

We beg to acknowledge receipt of your favor of Sept. 8th enclosing the papers in the matter of British application No. 24,838, or '09. We are writing to ascertain whether or not the corresponding United States application is to be filed.

We shall let you know promptly of the decision in this matter.

Yours very truly,

BROWN & WILLIAMS
Tiffin, Sept. 29, 1910.

Mr. Lynn A. Williams
B. & W. Chgo Ill.

My dear Mr. Williams:—

I have not received further reply to your letter of the 10th inst. The time in which to get this application (British No. 24,838 of '09) has almost expired. I am obliged to request you to advise me by return mail your decision as well as that of the Webster Mfg. Co. on this matter. Please let me have the information as asked.

Y. T.
Jno. L. M.

550

DEFENDANTS' EXHIBIT NO. 29.

(Letterhead of Brown & Williams, Attorneys.)
Chicago, Oct. 1, 1910.

Mr. John L. Milton,
C/o Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:

Replying to your letter of September 29th, I have to say that we called the matter of the application covering the subject matter of the British patent No. 24838/'09 to Mr. Webster and the Webster Electric Company but have had

no reply. I do not believe they would wish me to decide the matter on my own initiative. I have therefore written them again enclosing a copy of your letter.

Yours very truly,

LYNN A. WILLIAMS

October 10th, 1910.

Mr. T. K. Webster, President
% Webster Mfg. Co.
Chicago.

My Dear Mr. Webster:

Mr. Lynn A. Williams has informed me that he has asked you for instructions regarding filing an application for United States patent on the invention disclosed in my British application #24,838/09 and that you had not replied. Please decide this question and advise Brown & Williams and me immediately.

I regard this case of importance and believe it is to be worth a patent.

Yours truly,

JNO L. M.

(Letterhead of Brown & Williams, Attorneys.)
Chicago, October 13, 1910.

Mr. John L. Milton,
c/o Webster Electric Company,
Tiffin, Ohio.

Dear Sir:

You will appreciate that I must be a little careful about taking up application work for you. I have, therefore, shown your letter to Mr. Linthicum. He says that there can be no objection to my taking up the work for you if the Webster Company is not interested. I have talked also with Mr. Webster over the telephone and have told him that I should like to file the application for you if he does not wish to do anything with it. He promised to come in today and to come to a final decision one way or the other. If the Webster Company does not care to do anything with the matter, I shall be glad to take it up for you and will proceed with the

preparation of the papers at once. We can have them ready in the course of four or five days and that will give us time to make any corrections or revisions that may be required before they are executed and filed.

I will write you tonight, telling you whether or not
536 Mr. Webster has been here and, if he comes, the result of our interview.

Yours very truly,

LYNN A. WILLIAMS

537

DEFENDANTS' EXHIBIT NO. 25.

(Letterhead of Brown & Williams, Attorneys.)
Chicago, October 13, 1910.

Mr. John L. Milton,
c/o Webster Electric Company,
Tiffin, Ohio.

Dear Sir:

Mr. T. K. Webster has been in talking with me about the United States application covering the subject-matter of your British application, No. 24,838/09. He will not be able to come to a definite conclusion until tomorrow when he wishes me to look over one of the low tension machines which the company is now making.

I told him that you appreciated the importance of having the United States application filed at once and that you were, therefore, insistent that a decision should be reached. I told him that you were right in appreciating the importance of prompt action. The result of our conference was that we shall proceed at once with the preparation of the application papers and before they are finished Mr. Webster will have come to a decision. If he does not wish to file the application, it will be available to you for that purpose and can
538 be filed easily within the time limit.

Yours very truly,

LYNN A. WILLIAMS

DEFENDANTS' EXHIBIT 37.

(Letterhead of Brown & Williams, Attorneys)

Chicago October 25, 1910

Mr. John L. Milton,
Tiffin, Ohio.

Dear Sir:—

I have been doing my level best to revise your Case 10 and get it in such shape that you can send it to the Commissioner of Patents.

I think now you will find it in such shape that it can be filed even if it is not in the shape in which you would like to have it issue.

We have been overwhelmed with work here recently and Mr. Boettcher was not able to dictate the former draft of the specification and claims until late Friday night when he mailed the papers to you without my having had an opportunity to see them. I thought it important that you should get them Saturday and I thought it best, since we had the British papers to follow in preparing the United States case, to have the papers forwarded even though I could not see them.

Since looking them over I think possibly they do not bring out the advantages of the construction as fully as might have been done. However, both the original draft and the present set of papers are sufficient to explain the construction 559 and if they are not yet in satisfactory shape, we can make the necessary changes by amendment.

The British application referred to means controlled by the engine governor for regulating the up and down position of the reciprocating rod. It would be necessary in the United States, however, to show some such mechanism or else to cancel all reference to it and I have thought it best therefore to add an illustration of the auxiliary roller for controlling the position of this rod.

You can file the application as suggested by forwarding the original specification properly executed together with the drawings to the Commissioner of Patents. Do not fail to enclose a money order for \$15.00 filing fee.

Yours very truly,

LYNN A. WILLIAMS

554

DEFENDANTS' EXHIBIT 34.

(Letterhead of Brown & Williams, Attorneys)
Chicago, Dec. 3, 1910.

Mr. John L. Milton,
C/o Webster Elec. Co.,
Tiffin, Ohio.

Dear Sir:

We are just in receipt of a Patent Office Action in the matter of your application, Case 10 for patent on your improved Magneto Generator. The examiner requires a new oath and also asks for further illustration of the cam surface on the yoke which forms part of the mechanism. We shall follow up this matter as promptly as possible.

Yours very truly,
BROWN & WILLIAMS.

552

DEFENDANTS' EXHIBIT 31.

(Letterhead of Brown & Williams, Attorneys)
Chicago January 5, 1911.

Mr. John L. Milton,
c/o Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:

Since the Webster people have not indicated any wish to secure the rights under your patent application, Case 10, which was recently prepared and filed, we are charging the matter to you and shall handle the application for you in accordance with the request contained in the letter in which the matter was presented to us. As the matter of the charge has been somewhat delayed, pending the decision of the Webster Company, we should like to have the account settled promptly.

Yours very truly,
BROWN & WILLIAMS.

Enclosure.

553

DEFENDANTS' EXHIBIT 32.

(Letterhead of Brown & Williams, Attorneys)

Chicago February 7, 1911.

Mr. John L. Milton,
% Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:

We enclose herewith our statement covering the matter of your Case 10, regarding which the decision of Webster Electric Company has been so long delayed. We wrote Mr. Webster that unless we heard from him that the Webster Electric Company wished to take up the application, we would regard it as your own personal application and bill you accordingly. We do not know whether the matter is still under consideration by the Webster Electric Company, but under the circumstances we do not wish the payment of the bill delayed further. Will you, therefore, be kind enough to let us have your check to cover the amount? If later the Webster Company takes up the application, you can, of course, adjust this matter with it.

Yours very truly,

BROWN & WILLIAMS.

Enclosure

556

DEFENDANTS' EXHIBIT 36.

(Letterhead of Brown & Williams, Attorneys)

Chicago February 7, 1911.

Mr. John L. Milton,
% Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:

This morning I find the three samples of yoke to which you referred yesterday.

One of them contains a screw head adapted to engage the actuating crank or lever of the contact point. I cannot see that the other two are substantially different from one another in so far as the engagement of the actuating lever of the contact mechanism is concerned. If there is a difference, will you kindly drop us a line stating what it is?

The arm which carries the hardened engaging surface of

one of these two yokes carries an extension substantially in line with the axis upon which the yoke turns. It may be that this part is in some form of the device the one which actuates the contact points. If that is the case, we should like to be advised of it.

If not, kindly let us know what that extension is for and with what parts is cooperates.

557 We shall undertake to draw claims broad enough to cover all of the various forms.

Yours very truly,

LYNN A. WILLIAMS

560

DEFENDANTS' EXHIBIT 38.

Feb. 8, 1911.

Mr. T. K. Webster, Pres.,
Webster Mfg. Co.,
Chicago, Ill.

Dear Mr. Webster:

With reference to my U. S. patent application No. 589564 covering the trip finger and spring yoke, desire to state that Mr. Williams' seems quite anxious to know for whom he has and is handling this case. He has just sent me a second invoice for this work. If you do not care to have this patent taken out, please send Brown & Williams a check for \$82.50, as per the enclosed invoice, and charge same to my account.

Yours very truly,

JLM.BG

555

DEFENDANTS' EXHIBIT 35.

(Letterhead of Brown & Williams, Attorneys)

Chicago February 9, 1911.

Mr. John L. Milton,
c/o Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:—

Your letters of February 8th are received, one acknowledging the receipt of the memorandum in Cases 12, 13 and 14, another enclosing a letter to Mr. Webster regarding Case 10, and the other explaining the four samples of yokes which you have left with us or sent us.

We shall see to it that the claims in Case 10 are broad enough to cover the several styles of yoke.

Yours very truly,

BROWN & WILLIAMS.

DEFENDANTS' EXHIBIT 50.

2-5-19 E L C

(Letterhead of The Webster Electric Company)

Racine, Wisconsin July 23, 1914

Messrs. Hood & Schley,
908 Hume-Mansur Bldg.,
Indianapolis, Ind.

Gentlemen:

In reply to your letter of July 3, 1914, we beg to advise you that according to the information we have regarding the Hercules Electric Company's construction, claims 13, 14 and 15 of Podlesak patent 1,055,075 are infringed thereby. We trust that you will have no difficulty in applying the claims mentioned to the Hercules construction.

We also call your attention to Milton patent No. 1,096,048, which patent we believe is also infringed by the construction employed by the Hercules Company. Your attention is particularly directed to claim 6 of the Milton patent mentioned. For your information we are enclosing herewith a copy of patent No. 1,096,048.

Yours very truly,

THE WEBSTER ELECTRIC CO.

By S. A. LOEB

Vice Pres.

SAL:DP

Enc.

DEFENDANTS' EXHIBIT 72.

(Letterhead of Williams & Bradbury, Attorneys)

Chicago April 22, 1915.

Mr. Henry J. Podlesak,
1636 Millard Avenue,
Chicago, Illinois.

Dear Sir:

The Answer of the Alamo Company in the suit on the bracket patent alleges that the Webster Electric Company should be joined as a party plaintiff. If such is the case, it can be done by amending the Bill, but the Bill should be amended promptly, otherwise a considerable delay is likely to be entailed.

I should like, therefore, to amend the Bill of Complaint

by joining the Webster Electric Company as a plaintiff. If we do this, we shall have to show the Webster Electric Company's interest in the matter because of its license. The shop-right license to the Webster Company alleges that the patents, including the bracket patent, are owned jointly by yourself and Emil. If such is the case, it would probably be necessary to join you also as a party plaintiff. I should like, therefore, to learn what evidence we have of your joint ownership in the bracket patent.

If you can drop into the office at your convenience, we can go into the matter in further detail and determine just what to do with reference to an amendment of the Bill of Complaint in view of the papers or contracts relating to your interest and that of the Webster Electric Company in the patent.

Yours very truly,

LYNN A. WILLIAMS

563

DEFENDANTS' EXHIBIT 41.

(Letterhead of Williams & Bradbury, Attorneys)

Chicago November 19, 1915.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40 E. Lafayette Ave.,
Detroit, Mich.

Dear Sir:

I have been so very fully occupied that I have not until today had an opportunity to finish up the Trust Agreement by which I am authorized to fill in my name as Trustee in the blank assignment by which you were to be secured in the payment of the Webster Electric Company's notes. I am now enclosing, however, four copies of this Trust Agreement. Will you be kind enough to sign three of the copies with your name and return them to me whereupon I shall secure the signature of the Webster Company and after signing them myself I shall return one fully executed copy to you and return one to the Webster Electric Company, retaining the other signed copy for my own files. The fourth copy enclosed herewith may be retained by you as a memorandum.

In drawing this Trust Agreement it has been my purpose to follow exactly the substance of the Escrow Agreement but to arrange for filling up the blank assignment so that it may

be recorded and so that some one will have title in order to commence and maintain suits against infringers.

I believe the execution of the Trust Agreement will
564 secure you in the payment of the notes just as fully as
did the Escrow Agreement and that the Webster Electric Company will be fully protected in case the notes are paid, as I have no doubt will be the case.

Mr. Brown of the Webster Electric Company has advised me, regardless of the execution of this Trust Agreement, that if on the first of each month hereafter you will forward not only the note which matures on that date but also the four additional notes which have the longest time to run the Webster Electric Company will pay all five of the notes. Mr. Brown was, in fact, a little surprised that you did not send him five of the notes on or about the first of November and unless I hear from you to the contrary he will expect you to send him five of the notes for payment each month. If you prefer to have the Webster Electric Company authorize this I have no doubt Mr. Brown will do so if you will drop him a line.

Yours very truly,

LYNN A. WILLIAMS

Enclosures.

565

DEFENDANTS' EXHIBIT 42.

Nov. 29th, 1915.

Mr. Lynn A. Williams,
Monadnock Block,
Chicago, Illinois.

Dear Sir:—

I have just had an opportunity to go over the former papers dealing with the Webster settlement and find that there is quite evidently an omission in the Trust agreement which you have just drawn up.

The original general agreement between the Webster Manufacturing Company, Webster Electric Company, T. K. Webster, and myself of the 10th day of April 1912 in the 10th clause, gives me the right, by reason of an assignment, to use the invention covered in case 2 and case 5 for high tension ignition apparatus, whereas your Trust agreement does not make provision for this. It seems to me that a recorded license would be necessary.

Aside from this, I do not see any reason why the papers you have now prepared cannot be signed in accordance with our conversation on the subject.

In your letter accompanying these papers you stated that Mr. Brown would be willing to give me a letter setting forth their willingness to pay the four extra notes each month until all of them are disposed of. If this could be done and still be agreeable to all parties, I should like to have it.

Yours very truly,

JLM:LRJ.

562

DEFENDANTS' EXHIBIT 40.

(Letterhead of The Webster Electric Company)

Racine, Wisconsin June 2, 1916.

Mr. John L. Milton,
40-46 East Lafayette Ave.,
Detroit, Michigan.

Dear Sir:—

We paid \$1000.00 of your notes yesterday and it had been our intention to request you to send the balance of them at that time, and if you will kindly do so they will be paid on presentation, and you may so advise the bank in sending them in.

Hope you are find trade conditions satisfactory and are not having the trouble so many are of getting material.

Awaiting your esteemed favors, we are

Yours very truly,

THE WEBSTER ELECTRIC CO.

By WALTER BROWN

Gen. Mgr.

WB:DP

566

DEFENDANTS' EXHIBIT 43.

June 7th, 1916.

Dictated June 6th.

Webster Electric Company,
Racine, Wisconsin.

Attention of Mr. Walter Brown.

Dear Sir:—

Upon my return to the office this morning, I found your letter of the 2nd inst. and have this day advised the National Bank of Kentucky to forward the notes.

Although my direct connection with the Webster magneto has been severed, I have always held a personal interest in it and am pleased to hear the indirect reports of the splendid success with which your Company is meeting.

Will you be kind enough to let me have copies of your publications regarding the present product?

Thanking you in advance for same, your letter and the anticipated payments, I am

Yours very truly,

JLM:LRJ

567

DEFENDANTS' EXHIBIT 44.

(Letterhead of Williams & Bradbury, Attorneys)
Chicago September 11, 1916.

Mr. John L. Milton,
c/o Motor Ignition & Devices Co.,
40-46 Lafayette Ave.,
Detroit, Mich.

Dear Sir:

As opportunity has offered Mr. See has interviewed all of the possible witnesses as to the inventorship of the unitary plug and bracket arrangement which is involved in interference No. 39,013 between your patent and the Kane application, and I have just been reviewing all of the drawings and reports of interviews and the affidavits of the various parties.

There is no question but what there is more definite and explicit corroborative evidence to support Kane's allegations than there are to support your allegations. Under the circumstances I am convinced that we would have a better prospect of sustaining the patent containing these claims if made by Kane than if made by you. Under the circumstances we should like to file a concession of priority in favor of Kane, and have drawn up such a form. Will you be kind enough to execute the original copy of this concession and re-
568 turn it to me at your early convenience? Please be kind enough also to have two parties sign as witnesses to your signature.

For the purposes of your records I am enclosing an extra carbon copy which you may retain.

Yours very truly,

Encl.

LYNN A. WILLIAMS

JLM:SR

569

DEFENDANTS' EXHIBIT 44A.

UNITED STATES PATENT OFFICE.

John L. Milton
vs.
Edmund Joseph Kane } Before the Examiner of
Interferences.
Interference No. 39,013.

Concession of Priority.

John L. Milton, a party to the above entitled interference, hereby concedes priority of invention to Edmund Joseph Kane, the other party to said interference, as to all of the six counts which constitute the issue of said interference.

Signed at the City of _____, in the County of _____, and State of _____, this _____ day of _____, 1916.

Witnesses:

DEFENDANTS' EXHIBIT 44B.

September 13th, 1916.

Williams, Bradbury & See,
1315 Monadnock Block,
Chicago, Illinois.

Gentlemen:—

In reply to your letter of the 11th inst. dealing with Interference No. 39,013, would say that I can not concede priority because I personally am positive that Kane is not entitled to it and second, I am by no means convinced but that sufficient Court Proofs may be found to establish this.

While my title to this particular Patent has past, I am still personally interested enough in it to see that the right sort of treatment is accorded it.

Trusting that you recognize our position in the matter, I am

Yours truly,
MOTOR IGNITION & DEVICES COMPANY,

DEFENDANTS' EXHIBIT NO. 49.

2—390.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a photographic copy from the Records of this Office of the File Wrapper and Contents, in the matter of Interference Number 39,013, Milton vs. Kane, Subject-Matter: Magneto Generator.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 8th day of November, in the year of our Lord one thousand nine hundred and eighteen and of the Independence of the United States of America the one hundred and forty-third.

F. W. H. CLAY

Acting Commissioner of Patents.

571

DEFENDANTS' EXHIBIT NO. 49.
UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

United States Patent Office.

Photographic copy of File Wrapper and Contents Interference No. 39,013 Milton vs. Kane Subject-Matter: Magneto Generator.

572

1915

Vol. 40,

Page 487.

Interference.

No. 39013

John Lewis Milton Pat 1,096,048

vs.

Edmund Joseph Kane

Magneto Generator

D. 2097
(Div. of S. 541,428)

Division 28

All communications should be addressed to Letter No. 1.
 "The Commissioner of Patents,
 Washington, D. C."

DEPARTMENT OF THE INTERIOR,
 United States Patent Office,
 Washington, D. C.

Aug. 17, 1915., 190

Examiner of Interferences:

An interference is found to exist between the following cases, and in respect to the invention therein specified, to wit:

CASES.

*((2) 1.) Name (1) Edmund Joseph Kane
 Post-office address 123 South Waller St., Chicago, Ill.
 Title Electric Igniters
 Filed Jan. 14, 1915 Ser. No. 2097 Pat'd No.
 Division of Application No. 541,428, filed Feb. 2, 1910
 Attorney Brown, Nissen & Sprinkle of 312 So. Dearborn St.,
 Associate Att'y of Chicago, Ill.
 Assignee of
 *((1) 2.) Name (2) John Lewis Milton
 Post-office address c/o Webster Electric Company, Tiffin, Ohio
 Title Magneto-Generator
 Filed Oct. 28, 1910 Ser. No. 589,564 Pat'd May 12, 1914 No.
 1,096,048
 Attorney Lynn A. Williams of Monadnock Block, Chicago, Ill.
 Associate Att'y of
 Assignee of
 (Rubber stamp) Intf. Number 39013 Intf. Declared Aug.
 24 1915 Statements Due Sep 27 1915

3. Name

Post-office address

Title

Filed	Ser. No.	Pat'd	No.
Attorney		of	
Associate Att'y		of	
Assignee		of	

*Matter in italics in parentheses, stricken out in original transcript.

INVENTION.

Count 1. In combination, a field magnet, an inductor mounted upon a shaft for oscillation relative to the field magnet, a yoke mounted upon the shaft for oscillation with the inductor, an operating arm carried by the yoke, a reciprocating member driven by an internal combustion engine to engage the operating arm to swing the yoke in one direction, means for disengaging the reciprocating member from the operating arm to permit the oscillating parts to return to their normal position, spring mechanism connected with the

39013—1

27829b5m3-07

(Endorsed) Nov 7 1918

574

352

—2—

(Ex. of Interferences).

diametrically opposite arms of the yoke, to return it to the normal position when relieved of the pressure of the reciprocating member, a curved cam surface on one arm of the yoke, a fixed electrical contact and a swinging electrical contact in the combustion chamber of the internal combustion engine, a spindle upon which the swinging contact is mounted, a push finger mounted upon the contact and spindle and carrying an anvil normally disengaged from the cam surface of the yoke but adapted to be engaged by the cam surface upon the overthrow of the oscillating yoke to separate the electrical contacts, and a light spring acting to bring the swinging contact and the push finger into their normal positions.

Count 2. In a device of the class described, a suitable field magnet, an inductor adapted for oscillating with respect to the field magnet, a yoke rigidly connected with the inductor and having projections at diametrically opposite points, main actuating springs connecting the projections of the yoke with suitable stationary projections on the frame, the said actuating springs tending always to return the oscillating members to their normal positions, a pair of electrical contacts in the combustion chamber of an internal combustion engine, a light spring tending to maintain the closure of said electrical contacts, a push finger adapted when struck to separate the electrical contacts against the tension of the light spring, a curved cam surface on the yoke adapted to engage the push finger upon the overthrow of the yoke when returned to its normal position by the main actuating springs, an operating arm as-

sociated with the yoke, and reciprocating mechanism driven by the internal combustion engine to engage the operating arm to swing the yoke and the inductor out of their normal position.

Count 3. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation within the field magnet, a pair of main actuating springs, each connected at one end with the field magnet frame, an integral yoke member rigidly connected with the inductor, the main actuating springs being connected at their free ends with the said yoke member, an operating arm constituting a part of the integral yoke member and adapted to be engaged by a reciprocating member driven by an internal combustion engine, separable contact points within the combustion chamber of the internal combustion engine, a light spring tending to maintain the closure of the electrical contacts, and mechanism adapted to be engaged by a cam surface on the yoke member to cause the separation of said contacts in opposition to the tension of the said light spring.

Count 4. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation therein, spring mechanism tending to return the inductor to its normal position when moved out of said normal position, an operating arm for turning the inductor out of its normal position, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod being adapted normally to engage the end of the inductor-operating arm, means for shifting the path of travel of the reciprocating rod to determine its engagement with the op-

39013—2

(Endorsed) Nov 7 1918

575

353

—3—

(Ex. of Interferences).

erating arm, generating windings supported by the field magnet, separable electrical contacts in the combustion chamber of the engine, and a member fixed relative to the inductor adapted to effect the operation of said contacts to create an ignition spark within the combustion chamber of the engine.

Count 5. In a device of the class described, a field magnet, an inductor mounted for oscillation therein, an operating arm for said inductor, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod adapted normally to engage the end of the

inductor-operating arm, generating windings supported by the field magnet, separable electrical contacts in the combustion chamber of the engine, and an impact member fixed relatively to the inductor adapted to separate said contacts to create a spark in the combustion chamber.

Count 6. In a device of the class described, a field magnet, a shaft, an inductor mounted upon the shaft for oscillation relative to the field magnet, a yoke mounted upon said shaft for oscillation with said inductor, springs tending to retain the inductor and shaft in normal position, an engine-driven member for oscillating said shaft and parts carried thereby, separable electrical contacts within the combustion cylinder of the engine, and an impact member fixed relative to the inductor and shaft arranged to effect the separation of said contacts to create an ignition spark in the combustion chamber of the engine.

The relation of the counts of the interference to the claims of the respective parties is as follows:

Counts:	Kane:	Milton:
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6

COUNTS COMPARED.

HHG

39013—3

(Endorsed) Nov 7 1918

A. R. BENSON

Examiner.

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 3

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington, D. C.

September 14 1915.

(Rubber Stamp) U. S. Patent Office, Interference Division
Sep 14 1915 Mailed
In Re Interference No. 39013.

Milton
v.
Kane.

133

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING

6 1652

Commissioner of Patents.

The notice of declaration of this interference which was sent to the patentee, John Lewis Milton, at his address of record, care of Webster Electric Company, Tiffin, Ohio, by registered mail, has been returned by the post office as undeliverable.

The attorney for Milton is accordingly requested to furnish the Office within fifteen days with the present address of this party in order that the aforesaid notice may be forwarded in accordance with the rules.

H. E. STAUFFER

Examiner of Interferences.

39013-4

(Endorsed) Nov 7 1918

577

39,013—4

(Rubber Stamps) Docket Clerk Sep 3 1915 Doc
Sep 6 1915 U. S. Patent Office Mail Room

IN THE UNITED STATES PATENT OFFICE.

Re Interference No. 39,013	}	Before the Examiner of Interferences.
between		
Edward Joseph Kane		
and John Lewis Milton, Electric Igniters.		

Hold

STIPULATION.

F It is hereby stipulated by and between counsel for the
respective parties, that the time as fixed in the Office Ac-
tion of August 24, 1915, for filing the statements under
S Rule 110 in this case, be extended ten (10) days; namely,
that said statements may be filed on or before October 7,
1915.

BROWN, NISSEN & SPRINKLER,
Attorneys for Kane.
LYNN A. WILLIAMS,
Attorney for Milton

Chicago, Illinois,
August 31, 1915.
39013—4
(Endorsed) Nov 7 1918

368

Defendants' Exhibit No. 49.

578

2— 4

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 5.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

JHD

Sept. 17, 1915.

(Rubber Stamp) U. S. Patent Office, Interference Division,
Sep 17 1915 Mailed
In Re Interference No. 39013.

Milton
v.
Kane.

234

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case
Very respectfully.

THOMAS EWING

6 1652

Commissioner of Patents.

The stipulation filed Sept. 3, 1915, is approved, and in accordance therewith the time for filing statements in this case is extended to October 7, 1915.

LOUIS E. GILES

Acting Examiner of Interferences.

39013—5

(Endorsed) Nov 7 1918

579

39,013—6
Doc

Telephone Harrison { 3634
 3638

Williams & Bradbury
Attorneys and Counselors
in
Patent and Trade Mark Causes
719-722 Monadnock Block
Chicago

Lynn A. Williams
Clifford C. Bradbury
Albert G. McCaleb
Robert F. Bracke

(Rubber stamps) Docket Clerk Oct 1 1915 U. S. Patent
Office Mail Room Oct 1 1915 U. S. Patent Office
September 27, 1915.

Hon. Commissioner of Patents,
Washington, D. C.

In re Interference No. 39,013,
Milton vs. Kane.

Sir:

In response to Office Letter, dated September 14, 1915, attorney for the party Milton states that he believes the present address of the party Milton to be, c/o Motor Ignition & Devices Company, 40 E. LaFayette St., Detroit, Michigan.

Respectfully,

LYNN A. WILLIAMS

39013—6

(Endorsed) Nov 7 1918

Room No. 261.
Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 7.

DEPARTMENT OF THE INTERIOR

United States Patent Office

IAW

Washington, D. C.

October 2, 1915.

In re Interference No. 39013.	}	Before the Examiner of Interferences.
Milton 115		
v.		
Kane.		

(Rubber stamp) U. S. Patent Office Interference Division
Oct 2 1915 Mailed

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING
Commissioner of Patents.

6 1652

The copy of the declaration of interference addressed to Milton, the patentee, c/o Webster Electric Company, Tiffin, Ohio, which was returned by the post office undelivered, is hereby remailed to said Milton c/o Motor Ignition & Devices Company, 40 E. LaFayette St., Detroit, Mich.

H. E. STAUFFER
Examiner of Interferences.

39013-8

(Endorsed) Nov 7 1918

581

39013—8

Statement of Kane

F Oct. 6 15

Approved Dec. 17 15

IN THE UNITED STATES PATENT OFFICE

F.

Re Interference No. 39,013

Milton

v.
Kane

} Before the
Examiner of Interferences.

PRELIMINARY STATEMENT OF E. J. KANE.

Edmund Joseph Kane, being duly sworn, deposes and says that he is a party to the above entitled interference;
 ✓ that he conceived the invention contained in the claims of his application declared to be involved in this interference on or about Feb. 1, 1909; that on April 11, 1909,
 ✓ he made a sketch of said invention, and that other sketches of the invention were made on subsequent dates; that on April 14, 1909, he completed detail working drawings of said invention; that on or about April 11, 1909, he
 ✓ first explained his said invention to others; that on or about April 14, 1909, he began to build a full-sized device embodying his invention, and that said full-sized
 ✓ device was completed and placed in use and successfully operated on or about May 1, 1909; that in July and August 1909 about ten more devices embodying the invention were completed and operated; that since the first said device was completed and successfully operated, more
 ✓ than fifty thousand devices embodying his said invention have been manufactured and sold and are in successful commercial use; and that the demand commercially for his said invention is increasing very rapidly.

Further deponent saith not.

EDMUND JOSEPH KANE.

Subscribed and sworn to before me this 4th day of October 1915.

THOMAS COLSON

Notary Public

9013—9

(Endorsed) Nov 7 1918

372

Defendants' Exhibit No. 49.

582

2—207

#9

Address only
The Commissioner of Patents,
Washington, D. C.

R. R. M.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

Oct. 7, 1915

In the Matter of the Interference of	}	Before the Examiner of Interferences Intf. No. 39013
Milton		
<i>vs</i>		
Kane		

Sir:

You are hereby informed that the preliminary statement of Kane has been received and filed.

By direction of the Commissioner:

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

BROWN, NISSON & SPRINKLE
312 S. Dearborn St
Chicago, Ill.

6—2051

39013—10

(Endorsed) Nov 7 1918

583

39,013—10
Doc

(Rubber stamps) Mail Room Oct 7 1915 U. S. Patent Office
Docket Clerk Oct 7 1915 U. S. Patent Office

IN THE UNITED STATES PATENT OFFICE

Re Interference No. 39,013

between

Edward Joseph Kane

and

John Lewis Milton,

Electric Igniters.

} Before the
Examiner of Interferences.

S

STIPULATION.

It is hereby stipulated by and between counsel for the respective parties, that the time as fixed in the Office Action of September 17, 1915, for filing the statements under Rule 110 in this case be extended ten (10) days; namely, that said statements may be filed on or before October 17, 1915, it being agreed that Kane's statement shall not be opened or made accessible to Milton prior to October 17, 1915.

LYNN A. WILLIAMS

Attorney for Milton.

BROWN, NISSEN & SPRINKLE

Attorneys for Kane.

Chicago, Illinois,

October 5, 1915.

39013—11

(Endorsed) Nov 7 1918

584

585

374

Defendants' Exhibit No. 49.

586

2—224

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 12.

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington, D. C.

October 11, 1915.

(Rubber stamp) U. S. Patent Office Interference Division
Oct 11 1916 Mailed

In Re Interference No. 39013. }

Milton

v.

Kane.

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING

6 1652

Commissioner of Patents.

The stipulation filed October 7, 1915, is approved and in accordance therewith the time within which preliminary statements may be filed in this case is hereby extended to October 18, 1915.

H. E. STAUFFER

Examiner of Interferences.

39013—14

(Endorsed) Nov 7 1918

587

39,013—13
Doc.

(Rubber stamps) Docket Clerk October 18 1915 U. S. Patent Office Mail Room Oct 18 1915 U. S. Patent Office

IN THE UNITED STATES PATENT OFFICE

Re Interference No. 39,013
 between
 John Lewis Milton
 and
 Edward Joseph Kane,
 Electric Igniters

} Before the
Examiner of Interferences.

STIPULATION

It is hereby stipulated by and between counsel for the respective parties, that the time as fixed in the Office Action of October 11, 1915, for filing the statements under Rule 110 in this case be extended ten (10) days, namely, that said statements may be filed on or before October 28, 1915, it being agreed that Kane's statement shall not be opened or made accessible to Milton prior to October 28, 1915.

LYNN A. WILLIAMS

Attorney for Milton.

BROWNE NISSEN & SPRINKLE

Attorneys for Kane.

Chicago, Illinois,
October 16, 1915.
39013—15

(Endorsed) Nov 7 1918

376

Defendants' Exhibit No. 49.

588

2— 4

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 14

DEPARTMENT OF THE INTERIOR

United States Patent Office

IAW

Washington, D. C.

October 18, 1915.

In Re Interference No. 39013.	}	Before the Examiner of Interferences.
Milton 456		
v.		
Kane.		

(Rubber stamp) U. S. Patent Office, Interference Division
Oct 18 1915 Mailed

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

6—1652

THOMAS EWING
Commissioner of Patents.

In view of the probable declaration of an additional interference involving the application of Kane, the time for filing preliminary statements herein is further extended to and including November 8, 1915. No action based on the stipulation filed October 18, 1915, is therefore necessary, and the same is hereby dismissed.

H. E. STAUFFER
Examiner of Interferences

39013—16

(Endorsed) Nov 7 1918

589

(Rubber stamps) Docket Clerk Nov 2 1915 U. S. Pat-
ent Office. Mail Room Nov 1 1915 U. S. Patent Office

39,013—15

IN THE UNITED STATES PATENT OFFICE.

In Re Interference No. 39,013 }
 between
 John Lewis Milton
 and
 Edmund Joseph Kane
 Electric Igniters. }

Before the
Examiner of Interferences

PETITION.

And now comes the applicant, Edmund Joseph Kane, by his attorneys, and requests that the order of October 18, 1915, be enlarged so that the time for filing preliminary statements in interference No. 39,013 shall be extended to and including November 29, 1915, which is the date now fixed as the limit for filing preliminary statements in interference No. 39,181, involving the said application of Kane and patent re-issue No. 13,878, reissued February 19, 1915, to Emil Podlesak, of Racine, Wisconsin. This request is made for reasons heretofore set forth in applicant's petitions of September 1, 1915, and October 4, 1915 (Chicago dates). Briefly stated, applicant's reasons for desiring the extension of time in interference with Milton is that the two interferences involve analogous subject matter, and are both based upon the disclosure in the Kane application. The record shows that the attorney for Kane and Milton is the same, and

Podlesak?

the real party in interest is the Webster Electric Company, the assignee and licensee of the Milton

39013—17

(Endorsed) Nov 7 1918

590

and Podlesak patents respectively. It is therefore desired that the preliminary statements in both interferences should be opened on the same date, as the opening of Kane's preliminary statement in

either of the interferences would have the effect of disclosing Kane's dates of conception, reduction to practice, etc., to one of the parties before he is entitled to such information. Kane's preliminary statement in the Milton interference is already on file.

Respectfully submitted,
BROWN NISSEN & SPRINKLE
Attorneys for Applicant.

Chicago, Illinois,
October 28, 1915.

39013—18

(Endorsed) Nov 7 1918

591

2— 4

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 16.

DEPARTMENT OF THE INTERIOR

United States Patent Office

GML

Washington, D. C.

November 3, 1915

In Re Interference No. 39013.

Milton 396

v.

Kane.

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING

6—1652

Commissioner of Patents.

This case is before me on petition by Kane filed November 1, 1915, to extend the time for filing preliminary statements to November 29, 1915. The time is now fixed for November 8, 1915. In support of the petition it is pointed out that preliminary statements in a companion case are due on November

29, 1915. Inasmuch as the practice is to open statements in all cases of a series at the same time, the petition is granted and the time for filing statements is hereby extended and fixed to expire November 29, 1915.

H. E. STAUFFER
Examiner of Interferences.

39013—19
(Endorsed) Nov 7 1918

592

39013—17
Statement of Milton
Filed Nov. 8 1915
Approved Dec. 17 1915

IN THE UNITED STATES PATENT OFFICE. F.

Re Interference No. 39,013	}	Before the Examiner of Interferences.
between		
John Lewis Milton		
and Edward Joseph Kane, Electric Igniters		

PRELIMINARY STATEMENT OF JOHN L. MILTON.

State of Michigan, }
County of Wayne, } ss.

JOHN L. MILTON, of Detroit, in the County of Wayne and State of Michigan, being duly sworn, deposes and says:

I am a party to the interference declared by the Commissioner of Patents on August 24, 1915 between Letters Patent No. 1,096,048, issued to me on May 12, 1914 and an application for Letters Patent said to have been filed by Edmund J. Kane; to the best of my knowledge and belief that I conceived the invention set forth in the declaration of interference on or about the 15th day of August, 1908; that on or about the 15th day of August, 1908, I first made drawings of the invention; that on or about the 15th day of August, 1908, I first explained the invention to others; that I first reduced the said invention to practice on or about the 24th day of September,

- ✓ 1908; that the said invention has gone into wide and extensive commercial use; and that I filed an application for British Letters Patent covering the same invention upon the 28th day of October, 1909, which said application was given No. 24,838, of 1909.

That some years ago I had delivered to the * (*residence*)
business place

39013—20

JNO. L. MILTON

(Endorsed) Nov 7 1918

592a of my brother-in-law in Louisville, Kentucky, for storage by him a large quantity of accumulated papers, documents and other personal effects; that I have endeavored by correspondence with my brother-in-law to have sent to me at Detroit, Michigan, any and all of my papers relating to the invention of the subject-matter of the above entitled interference; that the papers and documents thus far sent me have not borne upon the subject-matter of this interference; that I believe there are among the said personal effects certain papers relating to the history of my invention of the subject-matter of this interference; that in order to locate the said papers among the several boxes of papers thus stored, it will be necessary for me to make a trip to Louisville, Kentucky, which my health and business engagements will not at this time permit.

JOHN LEWIS MILTON.

Subscribed and sworn to before me this 6th day of November, A. D. 1915.

ELIZABETH A. HEMPLEY

Notary Public, Wayne Co., Mich.

My commission expires March 24, 1918.

39013—21

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

593

2—207

#18

Address only
The Commissioner of Patents, RRM
Washington, D. C.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

Nov. 9, 1915,

In the Matter of the Interference of } Before the Examiner
Milton *vs.* Kane, } Interferences.
Intf. No. 39013

Sir:

You are hereby informed that the preliminary statement of Milton has been received and filed.

By direction of the Commissioner:

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

LYNN A. WILLIAMS,
Monadnock Block,
Chicago, Ill.

6—2051

39013—22

(Endorsed) Nov 7 1918

(Rubber stamp) Docket Clerk Nov 30 1915 U. S. Patent Office

UNITED STATES PATENT OFFICE

John L. Milton
vs.
Edmund Joseph Kane } Interference No. 39,013.

STIPULATION

S It is hereby stipulated and agreed by and between counsel for the parties hereto that the preliminary statements heretofore filed herein shall not be made accessible to the parties until the preliminary statements in companion Interference No. 39,181, Podlesak vs. Kane, are opened. Counsel for the parties to this interference are also counsel for the parties Podlesak and Kane in Interference No. 39,181, in which last-mentioned interference counsel have this day stipulated that the preliminary statements shall not be opened until December 9, 1915, in order to give the party Podlesak time in which to file his statement.

LYNN A. WILLIAMS,
Attorney for Milton
BROWN NISSEN & SPRINKLE
Attorneys for Kane.

Chicago,
November 29, 1915.
39013—23

(Endorsed) Nov 7 1918

595

2-224

Room No. 261.
Address only "The Commis-
sioner of Patents, Wash-
ington, D. C.," and not
any official by name.

Paper No. 20

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington, D. C.

December 2, 1915.

(Rubber Stamp) U. S. Patent Office Interference Division
Dec 2 1915 Mailed

In Re Interference No. 39013. }
Milton } Before the Examiner of
v. } Interferences.
Kane.

Please find below a communication from the Examiner in
charge of Interferences in regard to the above-cited case.
Very respectfully,

6-1652

THOMAS EWING
Commissioner of Patents.

The receipt of the stipulation filed herein November 30,
1915, is hereby acknowledged and in accordance with the pro-
visions thereof the statements of the respective parties will
not be opened to inspection until the statements in interfer-
ence No. 39181 are opened. This is in accordance with the
established practice.

H. E. STAUFFER
Examiner of Interferences

39013-24

(Endorsed) Nov 7 1918

Room No. 261.

Address only

The Commissioner of Patents,
Washington, D. C.

Paper No. 21.

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington

December 17, 1915.

In Re Interference No. 39013.

Milton

130

v.

Kane.

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in
charge of Interferences in regard to the above-entitled case.

Very respectfully,

THOMAS EWING

Commissioner of Patents.

The parties to the above-entitled interference are hereby
notified that their preliminary statements are approved, and
that testimony must be taken, forwarded, and printed in ac-
cordance with the published Rules of Practice of the office.

The dates of filing and the Serial numbers of the applica-
tions are given, and the times for taking testimony and for
final hearing are set as follows:

6—2411

No testimony to be taken within thirty days.

John Lewis Milton filed Oct. 28, 1910, Ser. No. 589,564,
patented May 12, 1914, No. 1,096,048.

Testimony in chief to close Mar. 18, 1916.

Edmund Joseph Kane filed Jan. 14, 1915, Ser. No.
2,097, division of Ser. No. 541,428, filed Feb. 2,
1910.

Testimony to close Apr. 18, 1916.

Rebuttal testimony of Milton to close May 3, 1916.

Final hearing July 5, 1916, at 11 A. M.

H. E. STAUFFER

Examiner of Interferences.

39013—25

(Endorsed) Nov 7 1918

597

#22

Telephones Harrison } 3634
 } 3638

Williams & Bradbury
Attorneys and Counselors
in
Patent and Trade Mark Causes
719-722 Monadnock Block
Chicago

Lynn A. Williams
Clifford C. Bradbury
Albert G. McCaleb
Robert F. Bracke

(Rubber stamp) Docket Clerk Jan 8 1916 U. S. Patent
Office.

January 6, 1916.

Commissioner of Patents,
Washington, D. C.
Sir:

Kindly permit the Misses A. M. & E. H. Parkins of the Washington Loan & Trust Building, Washington, D. C., to examine the file wrappers of application of Edmund Joseph Kane, Serial No. 541,428 and Serial No. 2,097, filed respectively on February 2, 1910 and January 14, 1915. Kane's application No. 2,097 is a division of application Serial No. 541,428, which is involved in interference No. 39,013, Milton vs. Kane. I am attorney of record for the party John L. Milton.

Very truly yours,

LYNN A. WILLIAMS.

39013—26

(Endorsed) Nov 7 1918

(Rubber stamps) Docket Clerk Feb 14 1916 U. S. Patent
Office Mail Room Feb 1916 U. S. Patent Office

IN THE UNITED STATES PATENT OFFICE.

John L. Milton	}	Examiner of Interferences. Interference No. 39,103.
—v—		
Edmund Joseph Kane. Before the		

BRIEF IN OPPOSITION TO MOTION OF THE PARTY
MILTON TO SHIFT THE BURDEN OF PROOF.

The Commissioner of Patents,
Washington, D. C.
Sir:—

In response to the motion to shift the burden of proof, notice of the hearing of which on Tuesday, February 15, 1916, at 11:00 o'clock a. m., has been received, the party Kane asserts that the motion should be denied for the following reasons:

The Alleged British Patent to Milton Not Proven As
Required by Law.

Accompany the motion of Milton's attorney to shift the burden of proof in the above entitled interference, is an al-
39013—27

(Endorsed) Nov 7 1918

599 leged certified copy of a British patent bearing the name of one Milton and purporting to have been filed in the British Patent Office on the 28th day of October, 1909. Whether or not the Examiner of Interferences would be warranted in shifting the burden of proof in this interference on account of the showing thus made by Milton should, we believe, be very seriously questioned by the Honorable Examiner before he enters such an order. There is an affidavit of the inventor Kane on file, which was sworn to before a notary public in Chicago on the 3rd day of September, 1915, and was forwarded from Chicago to the Patent Office on September 4, 1915 and probably bears a filing date in the Patent Office within two or three days after the last mentioned date. This affidavit sets forth the sworn statement of Kane that

he disclosed his invention to John L. Milton "long before either Milton or Podlesak made application for their above mentioned patents (Nos. 1,096,048 and Reissue 13,878, respectively), and while said Milton and Podlesak were in the employment of the Webster Electric Company, in the experimental department thereof, in an endeavor to interest the Webster Electric Company in affiant's invention." It must be evident to the Examiner, from this sworn statement of Kane, that he will offer evidence that John L. Milton was not
39013—28

(Endorsed) Nov 7 1918 .. 2 ..

600 the inventor of any part of the subject-matter claimed in the Milton patent No. 1,096,048, and that he was not the inventor of the same subject-matter shown in the alleged British application and patent.

If the invention disclosed in the copy of specification and the drawing accompanying the alleged certificate from the comptroller general of patents, designs and trade-marks which accompanies the motion in behalf of Milton, could be shown by anything accompanying these papers of evidential value, to be the invention of John L. Milton, then the Examiner of Interferences might be warranted in considering this application to shift the burden of proof to rest upon the party Kane. We submit that Milton has failed to make any such showing as required by the statutes, the Patent Office Rules and the practice of the Office. The affidavit of Albert G. McCaleb, an associate of Attorney Lynn A. Williams, asserts nothing of evidential value except that certain papers referred to in his affidavit were received through the mails. Attached to a typewritten copy of an alleged specification and a photographic copy of a drawing, is a certificate attesting to the truth of these copies by an alleged comptroller general of patents from the Patent Office, London. There is
39013—29

(Endorsed) Nov 7 1918 .. 3 ..

601 nothing, however, submitted by which the Commissioner of Patents can determine whether these papers were in fact made by the proper officials of the British Patent Office or whether they are spurious. It would have been a comparatively easy matter for Milton to submit duly certified

copies of his application properly authenticated. The decision of the Commissioner in *Lauder v. Crowell*, 16 O. G., 405, makes it perfectly clear that the United States Patent Office cannot take cognizance of papers offered as evidence in the manner of the papers accompanying this motion. These papers were not delivered by the British Government to the Government of the United States in order to render them competent evidence in the United States, even if they were competent in England, as laid down in this decision. The Commissioner of Patents in the above mentioned decision, quoting from the decision of the Supreme Court of the United States in *Ennis v. Smith*, 11 How. 400, laid down the rule, which must be followed by the courts in receiving papers from foreign governments, in the following language:

"It may be verified by an oath, or by an exemplification of a copy under the great seal of a State, or by a copy proved to be a true copy by a witness who has examined and compared it with the original, or by a certificate of an officer properly authorized by law to give the copy which certificate must be duly proved."

39013—30

.. 4 ..

(Endorsed) Nov 7 1918

602 Has the certificate accompanying the typewritten specification, claims and drawing relied upon in this motion, been duly proved? We assert it has not. There is not one word of proof to show that the party who signed the certificate attached to said papers accompanying the motion was or is, in fact, the Comptroller General of Patents. It would have been a comparatively easy matter for Milton to have had a United States Consular Officer in London attest to the authority of this officer, and the Office of the Secretary of State of the United States at Washington could easily have affixed a certificate showing the proper authority of such Consular Officer. This, however, has not been done, and the alleged British patent application therefore, we submit, is not properly proved and cannot be relied upon by Milton in this motion.

No Proof That Milton Is the Inventor of Any Part of the Disclosure of the British Application.

It is submitted that the Honorable Commissioner cannot properly take cognizance of the papers accompanying the motion, because there is not a word of proof accompanying the

same to show that Milton was the inventor of any part of the disclosure, nor does the printed document on which Milton relies and which contains the complete specification and draw-39013—31

.. 5 ..

(Endorsed) Nov 7 1918

603 ings contain either the petition or declaration. In the language of the Commissioner of Patents in the above cited decision, therefore, like the printed document on which the party Hedderwick relied in that early case,—“It fails to show whether he is a mere importer or an actual inventor.” Assuming that the alleged certified application was properly proven and authenticated, which we have shown it is not, it then would not constitute *prima facie* proof that Milton is an original inventor of the device in question, for as the Commissioner of Patents stated in the *Lauder v. Crowell* decision,—

“It does not *prima facie* import invention in the sense of the American law, because under the English law it is immaterial whether the applicant for an English patent is himself the inventor or is only the importer of another’s invention.”

The stipulation then is that in England the papers accompanying this motion, even though proven to have been issued by and under the seal of the British Patent Office, would not prove Milton to have been the inventor of what is disclosed therein, for the reason that the papers contain no declaration or oath to the fact that he was the inventor of any part of what is disclosed therein. It is well known that in England Milton could file this application as a communication—39013—32

.. 6 ..

(Endorsed) Nov 7 1918

604 tion or as an importer of the invention into the realm without having anything whatever to do with making the invention at this time, and even though Kane was and is, as he has sworn and we maintain, the original inventor, if the papers referred to were duly authenticated, yet they could not be used as evidence to show Milton an inventor in England; how, then, can such papers have any evidential value in carrying Milton’s date of invention ahead of his filing date in the United States? Or, in other words, must the United States Patent Office accept such papers, unauthenticated and unsupported by any oath whatever, just because the British

Government happens to have granted a patent to one Milton who afterwards made oath in the United States to the fact that the invention had been patented abroad?

In the absence of any oath, therefore, accompanying the alleged certified papers on which reliance is made in support of this motion, it is submitted that Milton cannot set up a proven date of invention to the subject-matter described and claimed in his patent earlier than his filing date in the United States, which was on the 28th day of October, 1910, or on the anniversary of the filing date of the alleged British patent application. While his filing of his United States application in interference may have been technically within the one year allowed by the statutes, there may be a question
39013—33 .. 7 ..

(Endorsed) Nov 7 1918

605 whether the filing of the application is within the spirit of the statute, and under some decisions he might be held to have filed a day too late, in order to avail himself at all of the British application, even though he had made oath to being the inventor of the subject-matter disclosed in the British application, which he has not proven here, and even though the application set up in support of the motion were duly authenticated, which we have shown is not the case. The question must arise at once in the mind of this Tribunal, why John Lewis Milton should file a communication from the United States of America, over his signature, without any verified petition, declaration or oath, and why he should, on in the United States the anniversary of such filing, file an application [^] for patent describing the same and claiming portions of the disclosure of such British specification.

It is further submitted that the United States Patent Office cannot grant this motion on the faulty showing of this alleged British Patent, because it is otherwise fatally defective, containing no copy of the grant (see *Rousseau v. Brown*, C. A. D. C., 104 O. G., 1120).

In view of the above stated reasons, we submit the motion to shift the burden of proof should be denied.

Respectfully submitted,

BROWN NISSEN & SPRINKLE

Attorneys for Edmund Joseph Kane.

Chicago,
February 12, 1916.

39013—34

.. 8 ..

(Endorsed) Nov 7 1918

606

(Rubber stamp) Docket Clerk Feb 15 1916 U. S. Patent Office

39,013—24

UNITED STATES PATENT OFFICE

John L. Milton
vs.
Edmund Joseph Kane } Interference No. 39,013.

Before the Honorable Examiner-of-Interferences.
Messrs. Brown, Nissen & Sprinkle,
Attorneys for Kane,
Monadnock Block,
Chicago, Illinois.
Gentlemen:

Tuesday

15

Please take notice that on **(Monday)*, February **(14)*, 1916, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, we shall appear before the Honorable Examiner-of-Interferences in the United States Patent Office at Washington, D. C., and present the attached motion to shift the burden of proof in the above-entitled interference. Attached hereto and forming a part of this notice please find a duplicate of the certified copy of Milton's British patent application No. 24,838 of 1909, filed on October 28, 1909; also a copy of an affidavit of Albert G. McCaleb which we shall file in support of our aforesaid motion to shift the burden of proof.

Respectfully,

LYNN A. WILLIAMS
Attorney for Milton.

Due service of the above notice is hereby acknowledged this 8th day of February, 1916.

BROWN NISSEN & SPRINKLE
Attorneys for Kane.

013—35

(Endorsed) Nov 7 1918

**Matter in italics in parentheses, stricken out in original transcript.*

John L. Milton
vs.
Edmund Joseph Kane } Interference No. 39,013.

Before the Honorable Examiner-
of-Interferences.

MOTION

And now comes the party, John L. Milton, by his attorney, and moves that the burden of proof in the above-entitled interference be shifted to rest upon the party Edmund Joseph Kane. This motion is based upon the record herein, the attached certified copy of Milton's British patent No. 24,838 of 1909, filed in the British Patent Office on October 28, 1909, the accompanying affidavit of Albert G. McCaleb, and the statutes, conventions and Patent Office rules in such cases made and provided.

LYNN A. WILLIAMS,
Attorney for Milton.

39013--36

(Endorsed) Nov 7 1918

608 (Rubber stamp) Dock Clerk Feb 15 1916 U. S. Patent
Office.

UNITED STATES PATENT OFFICE

John L. Milton	}	Interference No. 39,013.
<i>vs.</i>		Before the Honorable Examiner-
Edmund Joseph Kane	}	of-Interferences.

AFFIDAVIT OF ALBERT G. McCALEB.

County of Cook. }
State of Illinois, } ss:

ALBERT G. McCALEB, being first duly sworn, on oath de-
poses and says:

I am a registered patent attorney; am associated with Lynn A. Williams, Esq., attorney of record for John L. Milton, one of the parties to the above-entitled interference. I am familiar with all of the proceedings heretofore had in the above-entitled interference, and am familiar with the subject-matter thereof. I am making this affidavit in support of Milton's motion to shift the burden of proof in the above-entitled interference.

This interference, which was declared on August 24, 1915, involves patent No. 1,096,048, granted to John L. Milton on May 12, 1914, as a result of an application for patent filed 9013—37

(Endorsed) Nov 7 1918

609 in the United States Patent Office on October 28, 1910.

The party Kane is an applicant. Although Milton's application was filed in the United States Patent Office on October 28, 1910, Milton, in his Oath accompanying the United States application, alleged that one year previously, to-wit, on October 28, 1909, he had applied for a patent in England covering the same subject-matter.

The preliminary statements in the above-entitled interference were opened on or about the 17th of December, last, and a few days thereafter in the regular course of business we, as

attorneys for Milton, received a notice from the Patent Office to the effect that the Kane application in interference was filed on January 14, 1915, the same purporting to be a division of an earlier application filed February 2, 1910. Kane was given the benefit of his earlier filing date, and the Examiner-of-Interferences, in setting times for taking testimony, etc., in accordance with the usual practice, made Milton the junior party, inasmuch as Milton's United States application was filed on October 28, 1910—a little over eight months after the filing date of Kane's earlier application aforesaid.

After receiving the Patent Office letter of December 17, 1915, setting times for taking testimony, etc., we exchanged copies of preliminary statements with Messrs. Brown, Nissen & Sprinkle, attorneys for Kane, and I took up with Messrs. Brown, Nissen & Sprinkle the matter of exchanging file-wrapper contents. On December 31, 1915, we received a letter from Messrs. Brown, Nissen & Sprinkle advising, in sub-9013—38

—2—

(Endorsed) Nov 7 1918

610 stance, that in view of the circumstances Kane's attorneys could not exchange copies of file-wrapper contents, but offering a stipulate an extension in the time for making motions under Rule 122. A copy of this letter from Messrs. Brown, Nissen & Sprinkle is hereunto attached and marked "Exhibit A, Albert G. McCaleb Affidavit." After the receipt of the letter aforesaid we ordered copies of the file-wrappers of Kane's two applications involved, which file-wrappers were received by us a short time ago and since which time we have devoted considerable time to the study of Kane's applications with a view to making motions under the provisions of Rule 122.

Shortly after the opening of the preliminary statements aforesaid the attorneys for Milton decided to move to shift the burden of proof in view of Milton's constructive reduction to practice in Great Britain on October 28, 1909, if a study of Kane's file-wrappers should reveal that there exists an interference in fact. Accordingly a search was instituted for a certified copy of Milton's British application, which we were informed, and believe, had been ordered and secured some years ago and before the declaration of the present interference. After considerable search and correspondence with the various interested parties it became necessary to discontinue the search for the certified copy in question and

to order a certified copy of Milton's original application from the British Patent Office. Accordingly we promptly cabled our London Associates to secure the necessary certified copy and mail it immediately. Shortly thereafter we received 39013—39

—3—

(Endorsed) Nov 7 1918

611 an answer to our cablegram, advising that an authorization duly signed by Mr. John L. Milton was necessary in order to secure the certified copy in question. This would indicate that since the war the British government will not issue certified copies of British patent applications without authorization from the applicant even though the patent has been granted on the application, as is the case in the present instance. Immediately upon receipt of the information above-mentioned we prepared the necessary authorization and forwarded the same to Mr. John L. Milton, who was and is located in Detroit, Michigan, instructing him to sign the authorization and forward it directly to our London Associates, Messrs. Dicker, Pollak & Derriman. This was promptly attended to, but it was not until January 20, 1916, that Messrs. Dicker, Pollak & Derriman were able to secure the certified copy and mail the same to us. This last information was obtained by cablegram in response to a cablegram sent to Messrs. Dicker, Pollak & Derriman inquiring when we might expect to receive the certified copy in question. The certified copy of Milton's British patent application No. 24,838 of 1909, attached to the accompanying motion to shift the burden of proof, was received by us yesterday, February 7, 1916, and we are promptly preparing to serve attorneys for the party Kane with a copy of the certified copy aforesaid and with copies of the various papers appertaining to Milton's motion to shift the burden of proof herein.

The drawings forming a part of Milton's British patent application filed on October 28, 1909, as shown by the certified copy before-mentioned, were and are substantially identical with the disclosure of Milton's United States patent.

—4—

(Endorsed) Nov 7 1918

612 tical with the disclosure of Milton's United States patent. The claims in issue are as clearly readable on the disclosure of the British application as they are upon the disclosure of Milton's United States patent, and therefore counsel for Milton are bringing this motion to shift the bur

of proof believing, as we do, that the party Milton is clearly entitled to October 28, 1909, as his date for constructive reduction to practice.

Further affiant saith not.

ALBERT G. McCALEB

Subscribed and sworn to before me this 8th day of February, A. D. 1916.

MARY A. COOK
Notary Public.

39013—41

—5—

(Endorsed) Nov 7 1918

613 EXHIBIT A, ALBERT G. McCALEB AFFIDAVIT.

Law Office of

Brown, Nissen & Sprinkle
1124 Monadnock Building,

Chicago, December 31, 1915.

Mr. Lynn A. Williams,
Seventh Floor Monadnock Block,
Chicago, Illinois.

Dear Sir:

Relative to the conversation we had over the telephone with your Mr. McCaleb and with Mr. Williams, about exchanging files connected with the Milton vs. Kane Interference, we have deferred reporting to you until we could have an opportunity to see Mr. Kane, who has some of the papers in his possession and who has been out of the city. Mr. Kane has now considered this matter with us, and inasmuch as his application which is in the Interference, is a divisional in another application of his, which is now on appeal to the Commissioner from the Board of Examiner-in-Chief, and inasmuch as the files are somewhat voluminous and we have only one copy which is more or less interlined with notations regarding conferences, etc., it seems to Mr. Kane and ourselves, that it would be better for each of us to procure our copies of the records from the Commissioner of Patents.

We would under ordinary circumstances be delighted to extend you the courtesy of examining our files, but, in this case, it seems better that each of us go to the Patent Office for such inspection of files as may be necessary. In taking this stand as Attorneys for Mr. Kane, we do not wish to do

anything that will embarrass you for want of time in making any motions should you deem it advisable to do so within 9013—42

(Endorsed) Nov 7 1918

614 the thirty (30) days as provided under the rules and, therefore, since also some time has elapsed following the opening of the preliminary statements, we wish to say that we will gladly stipulate an extension of such reasonable time as may be required for each of us to get copies of the files from the Commissioner of Patents and we will sign such a stipulation at any time you present it for such reasonable extension, as we know that the Commissioner is frequently behind in filling orders for certified copies of files.

Yours very truly,
(Sgd.) BROWN, NISSEN & SPRINKLE.

ALS-KGS.

39013—43

—2—

(Endorsed) Nov 7 1918

615 Form P. Cert. 1

(Coat of Arms)

PATENTS AND DESIGNS ACT, 1907.

It Is Hereby Certified by the Comptroller-General of Patents, Designs and Trade Marks that the annexed are true copies of the complete specification and drawings as lodged on the 28th October, 1909, in connection with Milton's application for Patent No. 24,838 of 1909, filed on the 28th October, 1909.

This certificate is issued for use in Interference Proceedings in the United States of America. Witness my hand this 20th day of January, 1916.

(Seal)

W. TEMPLE FRANKS
*Comptroller-General of Patents,
Designs and Trade Marks.*

The Patent Office,
25, Southampton Buildings,
London, W. C.

(J 2167—3 a.) Wt. 4051—4072. 2000. 5/15. D & S.

39013—44

(Endorsed) Nov 7 1918

616 24838

28 Oct 1909

PATENTS AND DESIGNS ACT, 1907.

Complete Specification.

"Improvements in and relating to Magneto Generators."

I, John Lewis Milton, of 1075 West 15th Street, Chicago, County Cook, Illinois, United States of America, Electrician, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

39013—45

—1—

(Endorsed) Nov 7 1918

617 This invention relates to magnetic generators and is particularly applicable to that type of magnetic generator which has been, as regards certain features thereof, indicated in my co-pending application for Letters Patent No. 22271/08 and as regards other features thereof will be described in a further application which I am about to file.

The object of the invention is to obtain a cheap and efficient construction, and the present invention deals with the cheapening of construction, more particularly with regard to the operating part of the magneto, and at the same time provides against undue hammering of the contacts.

The invention consists in a construction in a magneto, more especially of the type indicated above, in which an element operating the inductor, acts also as or carries a cam surface whereby the ignition points are allowed suddenly to be broken but slowly to contact, whereby undue hammering of the contacts is obviated, and which also acts as or carries supports for the springs operating the inductor.

The invention also consists in an arrangement whereby unnecessary hammering of the contacts is avoided which consists in throwing the inductor out of action, except during such time as the spark is required to pass for ignition purposes.

The invention also consists in the improvements in and relating to magneto generators referred to hereinafter.

39013—46

—2—

(Endorsed) Nov 7 1918

618 Referring to the accompanying drawings, Figures 1, 2 and 3 represent in plan, elevation, and side elevation respectively one manner of carrying my invention into effect.

Figure 4 shows more particularly a detail view of the operating member which also acts as the cam referred to above and carries the operating springs.

In the form of the invention illustrated a magneto frame of substantially circular contour, for example, as is indicated in my applications for Letters Patent referred to above is denoted as a whole by *a*. It includes two sets of three pole pieces, the middle pole of each being wound for the generation of currents.

The inductor is indicated by *b* and operated by springs, *c*, the magneto being of a reciprocating type.

The construction of magnet frame and inductor and their operation need not be further explained here.

The shaft *d* of the inductor carries thereon an element which is preferably a malleable casting *e*. This has two arms *f*, adapted to hold one end of the springs *c*, the other end being held by bolts *g* in connection with the inductor frame.

The malleable *e* also carries an operating arm *h* which preferably has a hardened face *v*, against which the operating rod *j* contacts.

Further, one of the arms *f* is formed with a cam surface *k*—which in the present form is of circular contour—adapted

39013—47 —3—

(Endorsed) Nov 7 1918

619 to contact with the face *l* of a screw rod *m* as explained below.

In operation the rod *j* engages the face *i* of the arm *h* moves the inductor, subsequently releases it and the springs *c* sharply move it in the proper manner for generating the desired current, as indicated in my applications for Letters Patent, referred to above.

The malleable *e*, however, overruns its normal position, whereupon the cam *k* strikes the surface *l* and opens the contacts *n*, because one of these contacts is situate on an arm *o*, in connection with a rod *p* passing through a sleeve *q* of the rod *p*, also carrying a bracket *q*, which in turn carries the bolt *m*; thus a sudden break is made at the proper time and the desired ignition effected.

After this over-running the surface *l* is kept in contact with the cam surface *k* by means of the light spring *r* whereby the

contacts *m* gradually, but not suddenly approach one another, thus unnecessary hammering is avoided.

Further, to avoid unnecessary hammering and wear of the contacts, I provided on the operating rod *j* a cam piece *s* which by the action of the roller *t* operable from any suitable part of the engine can throw the rod *j* sufficiently high to miss the face *i*, for all strokes except those on which ignition is required.

The roller *t* is mounted eccentrically on the shaft *u* and can be rotated by the arm *v* for the purpose of retarding the ignition at starting and advancing it when running.

39013—48

—4—

(Endorsed) Nov 7 1918

620 It may be noted that the whole construction may be applied to a cylinder in place of a sparking plug, where such is now used, by withdrawing the sparking plug setting and bolting the entire arrangement by two bolts passing through the holes *w*.

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed I declare that what I claim is:—

1. In a magneto generator an arrangement for allowing the spark contacts slowly to be approached and quickly to be separated; substantially as and for the purpose described.

2. In a magneto generator and element connected with the inductor and carrying an arm for operating purposes, a cam surface for the purpose referred to in claim 1 and supports for the operating springs; substantially as described.

3. In a magneto generator an element operating the inductor which acts also as or carries a cam surface whereby the ignition points are allowed suddenly to be broken, but slowly to contact whereby undue hammering of the contacts is obviated, and which also acts as or carries supports for the springs operating the inductor; substantially as described.

4. In a magnetic generator an arrangement whereby unnecessary hammering of the contacts is avoided, which consists in throwing the inductor operator out of action except during such time as the spark is required to pass for ignition

39013—49

—5—

(Endorsed) Nov 7 1918

621 purposes; substantially as described.

5. The improvements in and relating to magneto gen-

erators herein referred to with reference to the accompanying drawings.

Dated this 28th day of October 1909.

MARKS & CLERK,
57 & 58, Lincoln's Inn Fields,
London, W. C.
13, Temple Street,
Birmingham, and
25, Market Street,
Manchester,

Agents.

Exd. F.J.W. 20/1/16.

39013—50

(Endorsed) Nov 7 1918

—6—



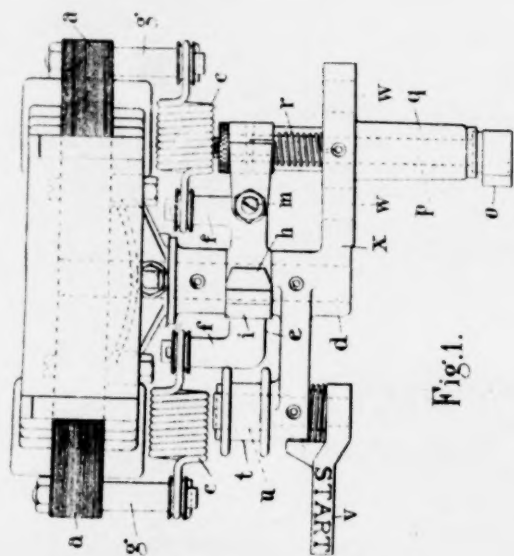


Fig. 1.

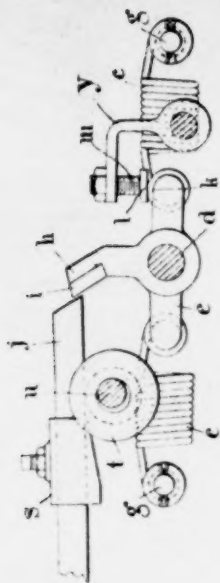
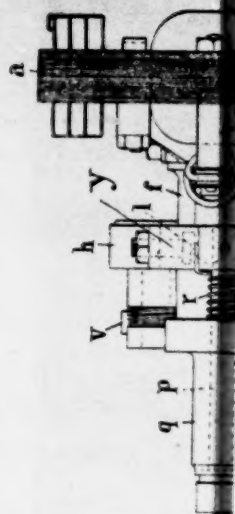
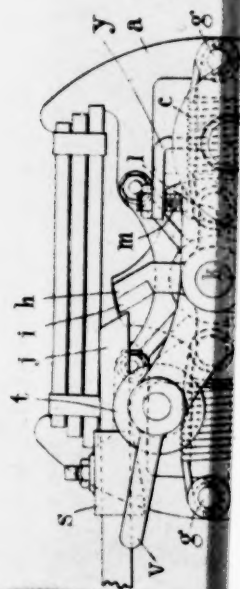
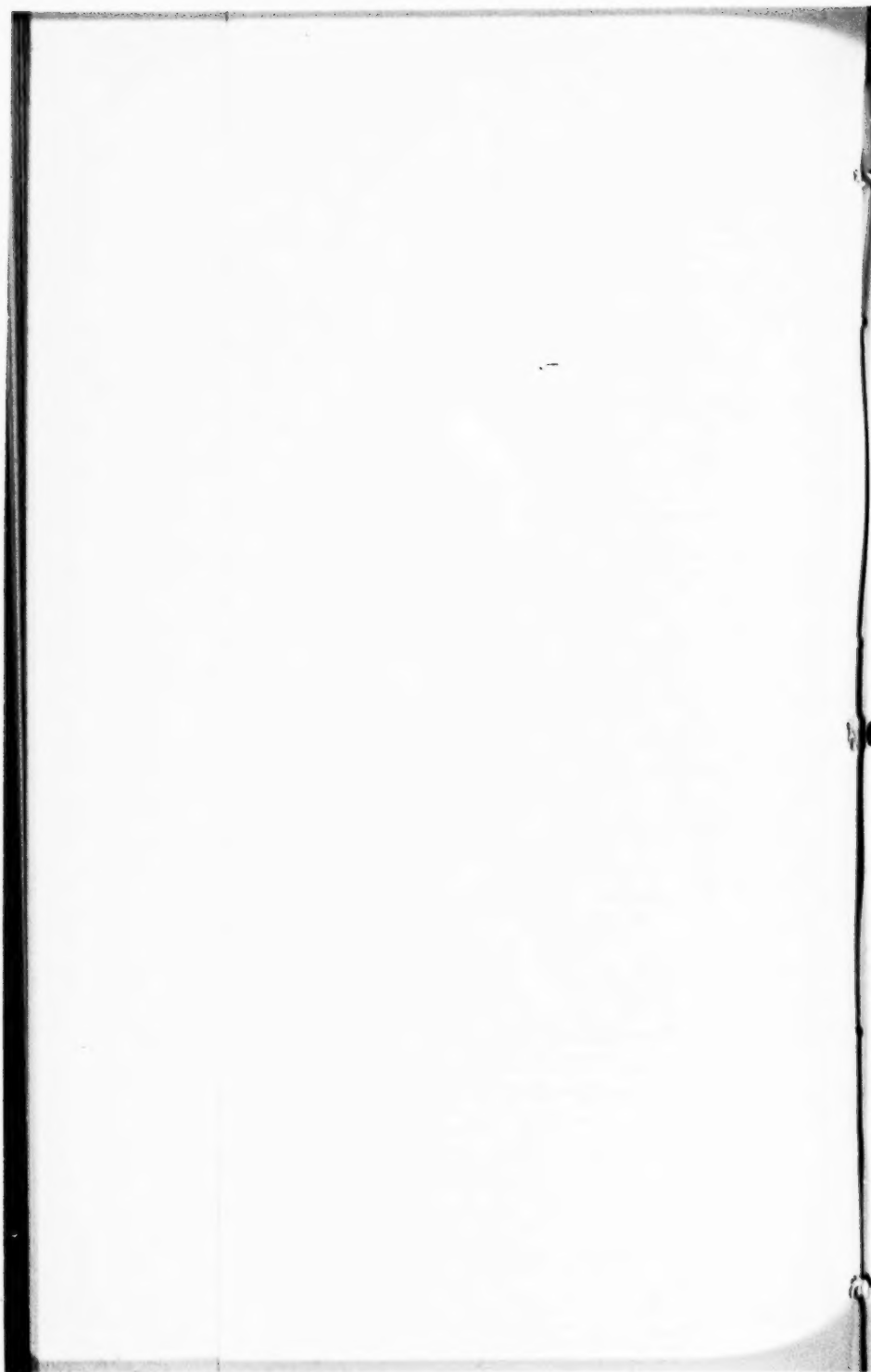


Fig. 4.





623

39,013—25

(Rubber stamp) Docket Clerk Feb 15 1916 U. S. Patent Office.

UNITED STATES PATENT OFFICE

John L. Milton	} Interference No. 39,013.
<i>vs.</i>	
Edmund Joseph Kane	

Before the Honorable Examiner-of-Interferences.

MEMORANDUM BRIEF IN SUPPORT OF MILTON'S
MOTION TO SHIFT THE BURDEN OF PROOF.

This interference involves Milton's patent No. 1,096,048, granted May 12, 1914, on an application filed October 28, 1910, and an application filed by the party Kane on January 14, 1915, purporting to be a division of an earlier Kane application filed on February 2, 1910. After the opening of the preliminary statements herein the Examiner-of-Interferences set the times for taking testimony in accordance with the dates of filing, as is the usual practice in the Patent Office. The thirty day period in which to make motions to dissolve elapsed on January 17, 1916. It is not our understanding that a motion to shift the burden of proof need necessarily be brought within the thirty day period, but in any event we submit that the facts as presented in the affidavit supporting the motion adequately and satisfactorily explain why the motion was not brought sooner. The party Kane has had ample notice of Milton's British Patent, inasmuch as it is referred to in both Milton's oath as filed with his United States application and also in Milton's preliminary 39013—54

(Endorsed) Nov 7 1918

624 statement herein. The certified copy of Milton's original application for a British Patent which, as we understand it, is a necessary part of this proceeding under the rule laid down by the Commissioner in such cases, was not received by us until February 7, 1916, and this motion is being noticed promptly upon receipt of said certified copy.

Milton's British Patent Application

As previously pointed out, Milton's oath as filed with his United States application refers to the British application in the following language to wit:

"and that no application for patent on said improvement had been filed by him or his representatives or assigns in any country foreign to the United States, except in England, where such an application was filed on October 28, 1909."

Again in his preliminary statement as filed herein the party Milton stated:

"I filed an application for British Letters Patent covering the same invention upon the 28th day of October 1909, which said application was given No. 24,838 of 1909."

With our motion to shift the burden of proof herein we are filing a copy of Milton's application for patent as filed in Great Britain on October 28, 1909. A duplicate of this certified copy has been duly served upon the counsel for Kane. The disclosure of the British application is identical with the disclosure of Milton's United States Patent in interference in so far as the subject matter in issue is concerned. The British application drawings correspond figure for figure with the United States drawings, and the specification of the British application as filed so describes the mechanism

—2—

(Endorsed) Nov 7 1918

625 that we believe counsel for Kane will not urge that the

British application as shown by the certified copy filed herein does not disclose the subject matter set forth in the claims of the issue. Certainly, if there arises any such question as to the identity of structure it can readily be disposed of by comparing the drawings of Milton's United States and British application and by reading the claims of the issue upon the British drawings.

The Law.

Section 4887 of the Revised Statutes reads in part as follows:

"An application for patent for an invention or discovery or for a design filed in this country by any person who has previously regularly filed an application for a patent for the same invention, discovery, or design in a foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States shall have the same force and effect as the same application would have if filed in this country on the date on

which the application for patent for the same invention, discovery, or design was first filed in such foreign country, provided the application in this country is filed within twelve months in cases within the provisions of section forty-eight hundred and eighty-six of the Revised Statutes, and within four months in case of designs, from the earliest date on which any such foreign application was filed."

The present case falls clearly within the statute because the counts of the interference cover a mechanical invention, Milton's United States application was filed one year to the day after his filing in Great Britain, and Great Britain is a party to the International Convention for the Protection of Industrial Property. If counsel for Kane raises any question as to whether or not Milton's United States application was

13—56

—3—

(Endorsed) Nov 7 1918

626 filed in time to entitle him to the benefit of his date of filing in Great Britain, we would call attention to the case of Hess-Bright Mfg. Co. et al. vs. Standard Roller Bearing Co., 171 Fed. Rep., 114—147 O. G. 521, wherein it was held:

"In computing time under Rev. St. 4887, as amended by Act March 3, 1903, c. 1019, 32 Stat. 1225 (U. S. Comp. St. Supp. 1907, p. 1003), permitting the filing of an application for a patent in this country within 12 months after the filing of an application for a patent for the same invention in a foreign country, the day of the application in the foreign country is excluded, and where the foreign application was filed on February 23d, an application filed in this country on February 23d of the following year was in time. (See Patents, Cent. Dig. 131; Dec. Dig. 97)." (Syllabus).

In this case the inventions covered by the two patents in suit were patented in Germany on an application filed in that country on February 23, 1903. The earlier of the applications on which the two patents in suit were allowed was filed in this country on February 23, 1904. The contention of the defendants was to the effect that the period of twelve months referred to in section 4887 of the Revised Statutes had expired before the earlier application was filed in this country. The court held this contention to be unsound. In his opinion the court said:

"I conclude that in the computation of time February 23, 1903, should be excluded, and that February 23, 1904 was available for the purpose of filing the original application for the patents now in suit."

Article 4 of the International Convention for the Protection of Industrial Property, with relation to the rights of priority in the contracting countries, reads in part as follows:
13—57 —4—

(Endorsed) Nov 7 1918

627 "Whoever shall wish to avail himself of the priority of an anterior filing, shall be required to make a declaration showing the date and the country of this filing. Each country shall determine at what moment, at the latest, this declaration must be executed. This information shall be mentioned in the publications issued by the competent Administration, particularly on patents and the specifications relative thereto. The contracting countries shall require of one who makes a declaration of priority the production of a copy of the application (specification, drawings, etc.) previously filed, certified to be a true copy by the Administration which shall have received it. This copy shall be dispensed from any legalization. It may be required that it be accompanied by a certificate of the date of filing, issuing from this Administration, and of a translation. Other formalities shall not be required for the declaration of priority at the time of the filing of the application. Each contracting country shall determine the consequences of the omission of the formalities prescribed by the present article, unless these consequences exceed the loss of the right of priority.

Later other justifications can be demanded."

The party Milton has complied with the requirements of the Convention by filing a certified copy of his British Patent application as filed on October 28, 1909.

The practice to be followed in cases similar to the one at bar is clearly set forth by His Honor Commissioner Ewing in the recent case of *Steel & Steel vs. Meyers*, 205 O. G. 1021. The Commissioner rendered his decision in this case after the Examiners-of-Interferences had requested instructions as to the practice to be followed in fixing the burden of proof where the benefit of a foreign application is claimed by one or more of the parties under the provisions of section 4887 of the Re-

vised Statutes. The Commissioner's decision reads in part as follows:

9013—58

—5—

(Endorsed) Nov 7 1918

628 "If an applicant who is involved in interference has stated in the oath to his original application that he filed the application in a foreign country, that should be taken, in my opinion, as establishing *prima facie* that the foreign application was filed by him or with his knowledge and consent. If, however, the original oath does not state that the foreign application had been filed, but the allegation is made in a subsequent oath or in the preliminary statement, the applicant should, in view of conflicting affidavits, be given the benefit of the filing of the foreign application only upon a stipulation of the parties or where it is established by duly taken testimony that he was in fact the party who filed the foreign application or that it was filed with his knowledge and consent.

The question whether an interferant is entitled to the benefit of his foreign application should be raised before the Examiner-of-Interferences rather than before the Primary Examiner, since it is one of evidence, as stated in *Raulet and Nicholson v. Adams*, *supra*, and at the time the interference is declared copies of the foreign application are not usually on file.

The Primary Examiner should therefore prepare the notices of interference in accordance with the date of filing of the applications in this country; but the Examiner-of-Interferences upon the filing of a proper motion, accompanied by a certified copy of the foreign application, shall in cases falling within the above ruling give the party filing the same the benefit of the foreign application if in his opinion the invention in issue is disclosed therein."

The oath accompany Milton's original application refers to his application in England and, therefore, in accordance with the rule laid down by the Commissioner should be taken as establishing *prima facie* that the foreign application was filed by him with his knowledge and consent. The party Milton is filing a motion to shift the burden of proof accompanied by a certified copy of his foreign application and therefore Milton is to be given the benefit of his foreign ap-

plication, if the Examiner-of-Interferences finds that the invention in issue is disclosed in the foreign application.

39013—59

—6—

(Endorsed) Nov 7 1918

629

Conclusion.

We submit, therefore, that the subject matter in issue is disclosed in Milton's British application as filed on October 28, 1909, and that Milton has complied with all of the requirements of the Statute, Convention and Patent Office practice whereby he is entitled to the benefit of his date of filing in Great Britain. We submit, therefore, that after the Examiner-of-Interferences has convinced himself that the subject matter of the issue is disclosed in Milton's British application, the burden of proof must be shifted to rest upon the party Kane.

Respectfully submitted,

39013—60

(Endorsed) Nov 7 1918

LYNN A. WILLIAMS

Attorney for Milton.

630

2—224

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 26.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

JHD

February 18, 1916.

In Re Interference No. 39013.

Kane

v.

Milton.

126

} Before the Examiner of
Interferences.

(Rubber stamp) U. S. Patent Office Interference Division
Feb 18 1916 Mailed.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING

Commissioner of Patents.

6—1652

This case is before me for decision on a motion to shift the burden of proof, filed February 15, 1916, in behalf of the junior party, Milton. The motion is opposed by Kane.

Milton is directly involved in this interference on a patent which resulted from an application filed October 28, 1910. Kane relies upon an application which is a division of an earlier application filed February 2, 1910. Milton by this motion is seeking to obtain advantage, under Section 4887 of the Revised Statutes, of a British application filed in his name on October 28, 1909.

Milton's motion is somewhat late in its presentation, but no objection has been raised on that ground and the delay has been sufficiently explained in the showing which accompanies the motion.

Kane opposes the motion on the ground that the copy of the British application which has been filed has not been duly authenticated. The copy which has been filed bears what
39013—61

(Endorsed) Nov 7 1918

631

39013—2.

purports to be the seal of the British Patent Office, and the signature of the Controller General of Patents, Designs, and Trade-marks. Kane contends, however, that the authority of the above mentioned officer of the British Patent Office should be attested by a United States consular officer whose authority should also be certified to by the Secretary of State at Washington.

What should be accepted as a certified copy to be used in support of a claim of priority of an anterior filing in a foreign country is defined in article 4 of the International Convention for the protection of Industrial Property, quoted by the Commissioner in his decision in the case of Steel & Steel v. Myers, 205 O. G., 1021, as follows:

(d) Whoever shall wish to avail himself of the priority of an anterior filing, shall be required to make a declaration showing the date and the country of this filing. Each country shall determine at what moment, at the latest, this declaration must be executed. This information shall be mentioned in the publications issued by the competent Administration, particularly on patents and the specifications relative thereto. The contracting countries shall require of one who makes a declaration of priority the production of a copy of the application (spe-

cification, drawings, etc.) previously filed, certified to be a true copy by the Administration which shall have received it. This copy shall be dispensed from any legalization. It may be required that it be accompanied by a certificate of the date of filing, issuing from this Administration, and of a translation. Other formalities shall not be required for the declaration of priority at the time of filing of the application. Each contracting country shall determine the consequences of the omission of the formalities prescribed by the present article, unless these circumstances exceed the loss of the right of priority.

In view of the above mentioned decision in the case of *Steel & Steel v. Myers*, and the definition of the requirements with respect to certification, quoted therein from the International Convention for the protection of Industrial Property, it is held that the copy of Milton's British application which has been filed is sufficient, as a basis for shifting the burden of

39013—62

(Endorsed) Nov 7 1918

632

39013—3.

proof, without further formal authentication, if otherwise satisfactory.

The motion is also opposed on the ground that there is no evidence as to the identity of the Milton who filed the United States application involved in this interference, and the Milton named in the certified copy of the British patent. This point has also been determined by the Commissioner in his decision in the case of *Steel & Steel v. Myers*, *supra*, in which it is said:

If an applicant who is involved in interference has stated in the oath to his original application that he filed the application in a foreign country, that should be taken, in my opinion, as establishing *prima facie* that the foreign application was filed by him or with his knowledge and consent.

Kane also objects to the sufficiency of Milton's British application as a basis for shifting the burden of proof because Milton's United States application was not filed until the anniversary of the filing date of the British application. This point was decided adversely to Kane's contention in the case of the *Hess-Bright Mfg. Co. et al. v. Standard Roller Bearing Co.*, 147 O. G., 521, in which it was held that the date upon which the foreign application was filed should be ex-

cluded in determining the year provided by the statute for filing the United States application.

In the case of *Steel & Steel v. Myers*, supra, it was held that the burden of proof should not be shifted unless it is found upon examination that the application relied upon contains a satisfactory disclosure of the invention in issue. On examination of the British patent relied upon by Milton, it is held that the invention in issue is fully disclosed therein. As to this point there appears to be controversy.

39013—63

(Endorsed) Nov 7 1918

633

39013—4.

It is asserted in behalf of Kane that the invention in issue was disclosed by him to Milton, and that an affidavit to that effect has been filed in the Kane application. The burden of proving such a disclosure would rest upon Kane. If, therefore, Milton is entitled to the benefit of the filing date of his British patent, and it is held that he is, Kane's alleged disclosure to Milton would constitute no reason for refusing to make Milton the senior party.

Milton's motion to shift the burden of proof is granted, and times for taking testimony and for final hearing are reset as follows:

Testimony in chief of Kane to close April 19, 1916.

Testimony of Milton to close May 19, 1916.

Rebuttal testimony of Kane to close June 3, 1916.

Final hearing August 3, 1916, at 11 A. M.

H. E. STAUFFER

Examiner of Interferences.

39013—64

(Endorsed) Nov 7 1918

(Rubber stamp) Mail Room Apr. 17 1916 U. S. Patent
Office

IN THE UNITED STATES PATENT OFFICE

John L. Milton	}	Before the
<i>v.</i>		Examiner of Interferences.
Edmund Joseph Kane		Interference No. 39,103

STIPULATION.

The Honorable Commissioner of Patents consenting, it is hereby stipulated by and between Counsel for the parties hereto that the time allotted the party Edmund Joseph Kane in which to take his testimony in chief be extended thirty (30) days from the date now set, that is, extended to close on May 19, 1916; the other times to be extended accordingly.

BROWN NISSEN & SPRINKLE,

Attorneys for Kane.

LYNN A. WILLIAMS

Attorney for Milton.

S

39013—65

(Endorsed) Nov 7 1918

635

2—224

Room No. 261.
Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 28.

DEPARTMENT OF THE INTERIOR

United States Patent Office

IAW

Washington, D. C.

April 18, 1916.

In Re Interference No. 39013.

Kane 323

v.

Milton.

} Before the Examiner of
Interferences.

(Rubber stamp) U. S. Patent Office Interference Division
Apr 18 1916 Mailed

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

6—1652

THOMAS EWING
Commissioner of Patents.

The stipulation filed herein April 17, 1916, is approved and times are extended as follows:

Testimony in chief of Kane to close May 19, 1916.

Testimony of Milton to close June 19, 1916.

Rebuttal testimony of Kane to close July 5, 1916.

Final hearing: September 5, 1916, at 11 A. M.

H. E. STAUFFER
Examiner of Interferences.

39013—66

(Endorsed) Nov 7 1918

416

Defendants' Exhibit No. 49.

636

2-224

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 29.

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington, D. C.

September 6, 1916.

(Rubber stamp) U. S. Patent Office Interference Division
Sep 6 1916 Mailed

In Re Interference No. 39013.

Kane

v.

Milton.

247

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-entitled case.
Very respectfully,

6-1652

THOMAS EWING
Commissioner of Patents.

The date set for final hearing in this case having passed, and Kane, the junior party, having failed to file any testimony within the time allowed for that purpose, priority of invention of the subject matter in issue is hereby rendered in favor of John Lewis Milton, the senior party.

Limit of appeal: September 26, 1916.

H. E. STAUFFER
Examiner of Interferences.

39013-67

(Endorsed) Nov 7 1918

637

Doc
39,013—30

(Rubber stamps) Mail Room Sep 25 1916 U. S. Patent
Office Docket Clerk Sep 25 1916 U. S. Patent Office

IN THE UNITED STATES PATENT OFFICE

John L. Milton	}	Before the
vs.		Examiner of Interferences.
Edmund Joseph Kane		Interference No. 39,013.

STIPULATION

It is hereby stipulated by and between Counsel for the parties hereto that the limit of appeal in the above entitled cause now set to expire on September 26, 1916, be extended for a further period of five days.

S (note)

WILLIAMS & BRADBURY
Attorneys for Kane.
LYNN A. WILLIAMS
Attorneys for Milton.

39013—68

(Endorsed) Nov 7 1918

418

Defendants' Exhibit No. 49.

638

2—224

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 31.

DEPARTMENT OF THE INTERIOR

United States Patent Office

LBF

Washington, D. C.

September 27, 1916.

(Rubber stamp) U. S. Patent Office, Interference Division
Sep 27 1916 Mailed
In Re Interference No. 39013.

Kane
v.
Milton.

425

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

6—1652

THOMAS EWING
Commissioner of Patents.

The stipulation filed September 25, 1916, is approved and in accordance therewith the time within which appeal may be taken from the decision of September 6, 1916, is hereby extended to October 2, 1916.

H. E. STAUFFER
Examiner of Interferences.

39013—69

(Endorsed) Nov 7 1918

639

39,013—32

(Rubber stamp) Docket Clerk Sep 28 1916 U. S. Patent
Office

UNITED STATES PATENT OFFICE

John L. Milton	}	Before the
v.		Examiner of Interferences.
Edmund Joseph Kane		Interference No. 39,013.

STIPULATION

It is hereby stipulated and agreed by and between counsel for the parties hereto that the judgment of priority heretofore rendered in favor of the party John L. Milton shall be vacated and times set for the taking of testimony and final hearing.

LYNN A. WILLIAMS
Attorney for Milton.
WILLIAMS & BRADBURY
Attorneys for Kane.

September 18, 1916.
39013—70
(Endorsed) Nov 7 1918

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 33.

DEPARTMENT OF THE INTERIOR

United States Patent Office

IAW

Washington, D. C.

September 29, 1916.

In re Interference No. 39013.

Kane
v.
Milton.

} Before the Examiner of
Interferences.

(Rubber stamp) U. S. Patent Office Interference Division
Sep 29 1916 Mailed

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING
Commissioner of Patents.

The stipulation filed herein September 28, 1916, is approved and in accordance with the provisions thereof the judgment entered September 6, 1916, is hereby vacated and set aside, and times for the taking of testimony are set as follows:

Testimony in chief of Kane to close October 30, 1916.

Testimony of Milton to close December 1, 1916.

Rebuttal testimony of Kane to close December 16, 1916.

Final hearing: February 16, 1917, at 11 A. M.

Because of the delays incident to the prosecution of the interference, the parties will be expected to take any testimony which they seek to introduce within the times now fixed, and the Office will not be in position to approve stipulations for extended periods.

H. E. STAUFFER
Examiner of Interferences.

39013-71

(Endorsed) Nov 7 1918

641

(Rubber stamp) (Not legible).

39,013—34

UNITED STATES PATENT OFFICE

Edmund Joseph Kane } Testimony & Exhibit
vs. } for
John L. Milton } Interference No. 39,013.

KANE

NOTICE

(Not legible)

Mr. Lynn A. Williams,
1315 Monadnock Block,
Chicago, Ill.

Dear Sir:

Please take notice that on Monday, October 23, 1916, beginning at two o'clock P. M., we shall proceed to take testimony on behalf of the party Kane at the office of Williams, Bradbury & See, 1315 Monadnock Block, Chicago, Ill., before Mary A. Cook, a Notary Public in and for the County of Cook, and State of Illinois. Under this notice we expect to examine Edmund Joseph Kane and Maurice Kane, both of Chicago, Illinois. You are invited to attend and cross-examine the witnesses produced.

Respectfully,

WILLIAMS & BRADBURY
Attorneys for Kane.

Due and timely service of the above Notice is hereby acknowledged this 21st day of October 1916.

LYNN A. WILLIAMS
Attorney for Milton.

39013—72

(Endorsed) Nov 7 1918

Edmund Joseph Kane }
vs. } Interference No. 39,013.
John L. Milton }

Testimony taken on behalf of the party Edmund Joseph Kane this 23d day of October, 1916, at two o'clock P. M., before Mary A. Cook, Notary Public, in and for the County of Cook, and State of Illinois, at the office of Williams, Bradbury & See, 1315 Monadnock Block, Chicago, Illinois.

Present: Albert G. McCaleb on behalf of Kane.

EDMUND JOSEPH KANE (*the fi*) being called in his own behalf after being duly sworn on oath, testifies as follows is answer to interrogatories propounded by counsel for Kane.

Q 1. Please state your name, age, residence and occupation.

A Edmund Joseph Kane, 122 Waller Ave., Chicago. Age 33. Mechanical Engineer, International Harvester Co.

Q 2. Are you the same Edmund Joseph Kane whose application for patent, Serial No. 2097, filed January 14, 1915, is involved in the above entitled interference?

A Yes.

Q 3. Where were you employed during the year 1909?

A Employed by the Webster Mfg. Co.

Q 4. Did you enter the employ of the company in 1909.

A Entered the employ October 1908.

Q 5. What were your duties during your employment with the Webster Mfg. Co?

A I was employed as a salesman and demonstrator.

39013J—73

1—E. J. Kane

(Endorsed) Nov 7 1918

643 Q 6. Was the Webster Mfg. Co. manufacturing and selling low tension ignition magnetos at the time you entered its employ?

A Yes.

Q 7. Will you please describe briefly what kind.

A The magneto the Webster people were making at that time was a spring magneto the magneto being mounted on the boss at the side of the cylinder connected up with igniter

of the engine by means of a rod and connected with an eccentric mounted on the cam shaft of the engine.

Q 8. Then I take it that other than the electrical connection between the magneto and the igniter and this rod extending from the magneto to the igniter there was no mechanical connection between the magneto and the igniter?

A. You are correct the only connections were the rod and wire.

Q 9. In that form of construction was it possible to remove the magneto without removing the igniter or vice versa?

A Yes that was possible.

Q 10. By what name was that magneto known to the trade?

A That magneto was known as the Milton Magneto.

Q 11. Do you happen to know who was the principal purchaser of these magnetos to which you refer?

A The principal purchaser was the International Harvester Co.

Q 12. I hand you herewith a pamphlet which has been marked in this case "Kanes' Exhibit No. 1?" and ask you to tell what it illustrates?

A This pamphlet illustrates the method of attaching the magneto to the International Harvester Company's engines when I first was employed by the Webster Mfg. Co. This is the construction in which the magneto is mounted
39013-74

—2 E. J. Kane

(Endorsed) Nov 7 1918

644 on a boss on the side of the cylinder and operates the igniter by means of a rod and is connected to the eccentric on the cam shaft of the engine by a combined lever and rod mechanism.

Q 13. Was this type of apparatus satisfactory in operation and did it meet with the approval of the trade?

A This type of construction was not satisfactory and
of

did not meet with the approval of the trade because/the great amount of trouble it gave in the field.

Q 14. Will you please state briefly some of the short comings of this class of apparatus?

A Due to the fact that you have the magneto and igniter mounted at different parts on the cylinder it was very easy for these parts to get out of adjustment with each other; also due to the fact that the magneto which was rather large and cumbersome was mounted on a small boss on the side of

the cylinder it was very difficult to rigidly hold the magneto in place and any small movement of the magneto would so disturb the proper relation between the magneto and movable electrode arm so as to put the time of spark of the engine out of time with the time of best spark of the magneto and this would cause a great deal of trouble in the field.

Q 15. Did you ever have occasion to design a low tension ignition outfit?

A Yes I designed one.

Q 16. Will you please state rather fully the circumstances which impelled you to design the apparatus to which you refer in your last answer?

A The Milton Magnetos attached to the boss on the side of the cylinder were giving so much trouble in the field that Mr. Watterman, Superintendent of the Milwaukee Works, of 39013—75

3—E. J. Kane

(Endorsed) Nov 7 1918

645 the International Harvester Co. wrote a letter saying that unless some radical improvements were made in this attachment that he would not recommend using the Milton Magneto any more on the International Harvester Company's stationary engines. For this reason I started to think quite seriously about what could be done to improve the attaching of magnetos to engines. I conceived the idea of mounting the magneto direct onto the igniter part of the engine and simplifying the operating mechanism so as to eliminate the troubles that we were having with **(this)* the Milton magneto and to meet the objections of Mr. Watterman's letter.

Q 17. Will you please state as closely as you can the dates when you conceived of the apparatus incorporated in the design which you made; also as closely as you can when you disclosed your ideas to others and when you made drawings showing your designs?

A A The idea of mounting the magneto directly on the spark plug was conceived some time in February **(19100)* 1909 and drawings made showing magneto and spark plug

11th

mounted on one piece casting were made April **(9th)* and

11th

April 14th, 1909. The drawing made April **(9th)* was dis-

Maurice

closed to Mr. **(Morris)* Kane, Mr. T. K. Webster, Mr. Wm.

*Matter in italics in parentheses, stricken out in original transcript.

Cavanaugh and Mr. Gerald Chiville. The drawing made April 14th was disclosed to Mr. Webster, Mr. Gerald Chiville, Mr. Abbott Munn.

Q 18. Will you please state who the gentlemen mentioned in your last answer are and what they were doing at the time you made your disclosure to them?

A Mr. Maurice Kane was General Manager of the Experimental Department of the International Harvester Co. He is also my father. Mr. Wm. Cavanaugh was Asst. Gen. 39013-76 4—E. J. Kane

(Endorsed) Nov 7 1918

646 Magr. of the Experimental Dept. of the International Harvester Co. Mr. T. K. Webster was President of the Webster Mfg. Co. Mr. Gerald Chiville was a Draftsman employed by the Webster Mfg. Co. Mr. Abbott Munn was Foreman in the Magneto Department of the Webster Mfg. Co.

Q 19. Will you please describe briefly the construction shown on the drawing which you say was made on April 11th, 1909, and which you say was disclosed to your father, Mr. Maurice Kane, Mr. T. K. Webster, Mr. Cavanaugh and Mr. Chiville?

A The construction shown on the drawing dated April 11, 1909, briefly consists of an igniter plug with an arm extending around from the side of the plug carrying a magneto. Mounted on the rotor shafts of the magneto is a trip with a small lug or projection on it which was so arranged as to engage a screw on the movable electrode arm. This trip was connected by means of springs to the magneto pole pieces and was operated by means of a lever which in turn was connected with an eccentric on the engine.

Q 20. I hand you herewith a drawing and ask you if you recognize the same?

A Yes I recognize this drawing as the one I made on April 11th, 1909.

Q 21 In the lower right hand corner of this drawing I note the legend "E. J. Kane, April 11, 1909." Do you know who put this legend on the drawing and when it was put on?

A I put this legend on the drawing at the time I made it, which was April 11, 1909.

Q 22. In this form of construction did you intend to have 39013-77 5—E. J. Kane

(Endorsed) Nov 7 1918

647 the igniter formed in one piece with the bracket?

A In the construction shown on the drawing dated April 11, 1909, it was my intention to show the magneto bracket and the igniter plug cast in one piece.

By Mr. McCaleb The drawing referred to by the witness is offered in evidence and the Notary is requested to mark the same "Kane's Exhibit No. 7, Drawing of April 11, 1909."

Q 23. Will you please describe briefly the construction, shown on your drawing of April 14 ^{*(1901)} 1909?

A The construction shown on the drawing marked April 14, 1909, consisted of a magneto ^{*}(*spark plug*) and igniter, and means for operating the magneto and separating the points at the spark plug. This drawing shows the igniter and the magneto bracket cast in one piece. It also shows the details of this construction fully.

Q 24. I hand you herewith a drawing which has been marked in this case with the legend "Kane's Exhibit No. 5" and ask you to identify the same if you can.

A This drawing which you have handed me is the one that I made and finished on April 14, 1909, and I identify the legend in the lower right hand corner as one that I put on it at the time that I finished this drawing which was April 14, 1909.

Q 25. What is the condition of the drawings "Kanes Exhibits Nos. 5 and 7 as compared with their condition when you made them?

39013—78

6—E. J. Kane

(Endorsed) Nov 7 1918

648 Q 25. Also please state where these drawings have been? since the dates they were made?

A These two drawings are in the same condition as when I originally made them. For some time after I made them these drawings were in my possession at 123 North Waller Ave. Chicago, and were later turned over to my patent attorneys, Brown, Nissen & Sprinkle. At the time the Webster Electric Co. purchased my patent rights I directed Brown, Nissen & Sprinkle to turn these drawings over to their patent attorneys, Williams & Bradbury.

Q 26. Will you please give a rather detailed description of this drawing of April 14, 1909, using a red pencil to identify the several parts. In this connection it might be well for you to explain in some detail the operation of the mechanism as well as its construction?

*Matter in italics in parentheses, stricken out in original transcript.

A The parts and operation as shown on my drawing marked April 14, 1909, and marked with red pencil are as follows:

No. 1 is the cylinder of the engine.

No. 2 is the igniter plug with the magneto bracket

No. 3 cast integral with the plug.

No. 4 is the inductor finger mounted on the rotor shaft

No. 5. The inductor finger is held in normal position by two springs No. 6, which are connected onto the other end to the pole pieces of the magneto No. 7.

No. 8 is the arm on the movable electrode No. 9.

No. 10 is a screw through the movable electrode arm No. 8. The inductor finger No. 4 is operated by means of a push rod No. 11 which in turn is operated by eccentric on the cam shaft of the engine. This eccentric is not shown on the draw-39013—79

7—E. J. Kane

(Endorsed) Nov 7 1918

649 ing. A cam No. 12 is placed on the push rod No. 11 and can be adjusted back and forth on the push rod No. 11 by means of the set screw in it. The push rod No. 11 works over a roller No. 13. This roller is carried on an eccentric shaft No. 14 and this eccentric shaft No. 14 is mounted on a bearing which is also part of the casting No. 3. On the other end of the eccentric shaft No. 14 is a small lever No. 15. By moving this lever back and forth the roller No. 13 is moved back and forth vertically. The magneto No. 16 is mounted on the bracket No. 3 by means of a boss and the shaft No. 5 which carries the roller No. 17 is journaled in the casting No. 3, and the rotor finger No. 4 lies in a depression of the casting 3.

Briefly described the operation of this mechanism is as follows: The push rod No. 11 is actuated by the cam on the engine and as it **(moves)* reciprocates it engages the rotor finger No. 4 and oscillates the rotor finger, rotor shaft, and rotor against the tension of the springs No. 6. When the cam No. 13 on the push rod No. 11 engages the roller No. 13 the push rod No. 11 is raised so that the rotor finger No. 4 is quickly brought back to its original position and carried past its original position by the inertia of the rotor finger and rotor. As the rotor moves through the magneto it generates a current and as the rotor arm No. 4 is carried past its original position by the tension in the springs the exten-

*Matter in italics in parentheses, stricken out in original transcript.

sion on the **(arms)* rotor arm engages the screw No. 10 on the arm 8 on the movable electrode No. 9. This engaging of the screw 10 on the rotor finger 4 causes the points inside the cylinder of the engine to separate and a spark to occur. When the rotor finger 4 engages the screw 10 the screw 10
39013—50 8—E. J. Kane

(Endorsed) Nov 7 1918

650 rides up on the rounding part of the rotor finger 4 and when the springs 6 bring the rotor finger 4 back to its normal position the screw 10 riding on the round or camlike part of the rotor finger 4 allows the points in the inside of the engine cylinder to come together gradually and eliminates pound and wear on the points. It will be noticed that the screw 10 has a lock nut on it and by loosening this nut the screw 10 may be adjusted back and forth as conditions require. It will be noticed that on the movable electrode there is a small spring No. 18 and it is obvious to any one inspecting the drawing that this spring is very much smaller and weaker than the two springs No. 6. It is necessary to have this spring lighter and weaker than the two springs No. 6 in order that this spring allows the movable electrode No. 9 to move when the rotor finger 4 comes in contact with the screw 10. The eccentric 14 is operated by the handle 15 and as the handle 15 is moved it raises or lowers the roller 13. As the push rod 11 rests on this roller it is also raised or lowered. It is plain that the less the push rod 11 engages the rotor finger 4 that the quicker the rotor finger will be released by the push rod 4. It is therefore possible by moving the lever 15 to change the time the engine sparks.

Q 23. Prior to the time you conceived of the construction shown on this drawing had you ever heard of a similar construction?

A No I had never heard of a similar construction.

Q 24. Had you ever heard of a construction wherein the igniter plug was formed integral with the magneto supporting bracket.

A No, I had never heard of a construction in which the magneto bracket was formed integral with the igniter plug.
31013—81 9—E. J. Kane

(Endorsed) Nov 7 1918

651 Q 25. Had you ever heard of a construction wherein

**Matter in italics in parentheses, stricken out in original transcript.*

the movable electrode was engaged directly by a part fixed upon and moving with the magneto rotor?

A No, I had never heard of such a construction.

Q 26. How, if at all, does the construction shown upon this drawing Kane's Exhibit No. 5 differ from the construction shown in your patent application involved in this interference? For your convenience, I hand you herewith a copy of your patent drawing which has been marked "Kane's Exhibit No. 4."

A **(De)* The difference between the drawing marked April 14, 1909, and the patent office drawing marked Exhibit No. 4 consists only in that on the patent office drawing No. 4 is shown a device for lifting the push rod out of engagement with the rotor finger on the idle strokes of the engine. This part of the mechanism I have claimed in another patent application.

Q 27. Was the structure shown on your drawing of April 14, 1909, ever embodied in an operative machine? If so please state when and under what circumstances.

A The structure shown in my drawing April 14, 1909, was embodied in a machine the latter part of April 1909. This machine was built at the factory of the Webster Mfg. Co. at Western Ave. and 15th St., Chicago.

Q 28. How are you able to fix the date?

A I fix this date because of the date on my drawing April 14th because I remember that as soon as this drawing was completed that we immediately proceeded to make working drawings and that just as soon as possible a machine was made.

39013—82

10—E. J. Kane

(Endorsed) Nov 7 1918

652 Q 29 How many of these complete machine were made by the Webster Mfg. Co. during 1909, if you know?

A To the best of my recollection there were only 3 or 4 of these complete machines made by the Webster Mfg. Co.

Q 30. In the first machines which you say were made in the latter part of April 1909, was the igniter plug cast integral with the bracket which carried the magneto?

A In the first machine which I said was made in the latter part of April 1909 the igniter plug and the magneto bracket were cast integral.

*Matter in italics in parentheses, stricken out in original transcript.

Q 31 How was the opening of the electrodes accomplished in these machines?

A These electrodes were operated and the points separated as shown on my drawing dated April 14, 1909.

Q 32. Do you know what has become of these first machines?

A The very first machine, the one made in the latter *•(part)* part of April, I took up to the Milwaukee Works of the International Harvester Co., installed it on an engine and left it there for test purposes. One of the other machines that was made a little bit later was sent out somewhere into the country and put on a tractor. The other machines I am not sure where they went.

Q 33 Do you know whether the International Harvester Co. ever sold magnetos embodying the invention disclosed in your drawing of April 14, 1909?

A I know that the International Harvester Co. sold a very large number of their engines equipped with the device shown on my drawing dated April 14, 1909. The Webster Mfg. Co. 39013.83

11—E. J. Kane

(Endorsed) Nov 7 1918

653 supplied the Harvester Co. with the magneto rotor, rotor shaft, rotor finger, and springs, and the igniter plug and bracket integral in one piece were manufactured by the International Harvester Co.

Q 34 How long were you in the employ of the Webster Co.?

A I was in the employ of the Webster Co. two years.

Q 35. Were you in Chicago all of that time?

A No. I was not in Chicago all that time. Along in the spring of 1909 the Webster Mfg. Co. started to manufacture high tension magnetos at Tiffin, Ohio, and about August 1909 they moved the low tension part of their business down there also. In the fall of 1909 I moved down to Tiffin and was there for some time. As near as I can recollect for several months.

Q 36. Were the first machines embodying the invention shown on your drawing of April 14, 1909, built before or after the low tension magneto business was transferred to Tiffin?

A The first machines embodying the construction shown in my drawing of April 14, 1909, were built before the low tension part of the magneto business was moved to Tiffin.

**Matter in italics in parentheses, stricken out in original transcript.*

Q 37. I hand you herewith a pamphlet with has been marked Kane's Exhibit No. 2" and will ask you to state what is illustrated on pages 4 and 5 thereof.

A This pamphlet which you hand me is a direction paper issued by the International Harvester Co. of America and cuts on pages 4 and 5 show a magneto with integral bracket and plug construction substantially as shown on my drawing of April 14, 1909.

39013—84

12—E. J. Kane—

(Endorsed) Nov 7 1918

654 Q 38. I show you a piece of apparatus marked "Kane's Exhibit No. 6" and will ask you to please state what it is.

A This machine that you show me is a magneto attachment as manufactured by the Milwaukee works of the International Harvester Co., and is substantially the same construction as is shown on my drawing of April 14, 1909. It shows an integral bracket and igniter plug construction. The means for rendering the magneto inoperative on the idle strokes of the engine have been changed slightly from the means illustrated on the Patent Office drawing marked "Exhibit No. 4."

Q 39. When did you first see International Harvester equipment identical with Exhibit No. 6?

A I first saw International Harvester Co. magneto attachments identical with machine labeled Exhibit No. 8 some time in September 1909, at the Milwaukee works of the International Harvester Co.

Q 40. I notice that in pamphlet "Kane's Exhibit No. 2" the magneto therein shown is referred to as the Milton magneto, do you happen to know why that name was used?

A The magneto used on these attachments was known as the Milton Magneto so that it was natural for the International Harvester Co. to label their direction paper, Directions for attaching Milton Magneto.

Q 41. Where was your drawing of April 11, 1909, Kane's Exhibit No. 7 made.

A The drawing labeled April 11, 1909, was made at my residence 123 No. Waller Ave. Chicago.

Q 42. Where was the drawing of April 14, 1909, Kane's Exhibit No. 5 made?

The drawing labeled April 14, 1909, was made on the fifth floor of the Webster Mfg. Co., Western Ave. & 15th St. Chicago

39013—85

13—E. J. Kane

(Endorsed) Nov 7 1918

655 Q 43. Was there any one near you, so far as you remember who might have observed you making this drawing?

A This drawing was made on an old drawing table in a kind of a stock room on the floor of the building where they were manufacturing the magnetos, and any of the men that were working up there at the time could have observed me making this drawing. Among those that were working with me at this time were Mr. Abbott Munn and Mr. Ernest Bruce. I am sure that Mr. Munn saw this drawing at the time I was working on it and I think possibly that Mr. Bruce did.

Q 44. When did you first learn of the fact that Mr. John L. Milton had applied to the Patent Office for patent covering the subject matter shown in the Milton patent **(whi)* with which you are in interference?

A I first learned of the fact that Mr. John L. Milton had obtained a patent on this device in which we are in interference when I saw that a patent had been issued to him when I was looking through the Patent Office Gazette very shortly after the date it was issued.

Q 45. Prior to that time had you any idea that any other than yourself claimed to be the inventor of this subject matter?

A **(A)* Prior to this time I had absolutely no idea that anybody else claimed to be the inventor of this device.

Q 46. Are you acquainted with Mr. Milton and if so when did you first make his acquaintance.

A I first made the acquaintance of Mr. John L. Milton some time early in the spring of 1908. I met him at the Milwaukee works of the International Harvester Co.

Q 47. Was Mr. Milton employed by the Webster Mfg. Co. at any time during your employment by said company?

A Mr. Milton was employed by the Webster Mfg. Co. at the time I was employed there. He was employed as Chief Engineer and when I first went there in the fall of 1908 he was 39013—86

14—E. J. Kane—

(Endorsed) Nov 7 1918

656 doing a great deal of work on both the high tension magnetos and also on the low tension magnetos. Along in the spring of 1909 because we had obtained a large order for high tension magnetos Mr. Milton was working pretty near exclusively on the high tension magnetos.

*Matter in italics in parentheses, stricken out in original transcript.

Q 48 Did Mr. Milton ever talk with you regarding a unitary construction wherein the plug and magneto supporting bracket were formed integral and wherein the movable electrode was operated directly by an arm on the oscillatory part of the magneto before you had completed and disclosed to others your drawing of April 14, 1909?

A Mr. Milton never talked to me about such a construction as you have described until after my drawing dated October 14, 1909 was completed.

Q 49 Do you remember when the first ignition outfit embodying the construction shown on your drawing of April 14, 1909, was tried out, if so, please state who were present at that test?

A The first construction as shown on my drawing April 14, 1909 was tested and tried out on a gas engine either the latter part of April or the first part of May 1909. There was present when we first tested this machine out Mr. Abbott Munn and myself. There may have been some of the other men of the works present as this test was made up on the fifth floor of the building and any of the men around there could have seen the test made. Shortly after we attached this device to an engine and tested it a delegation of officials from the general offices of the International Harvester Co. visited the fifth floor of the Webster Mfg. Co. to see this
39013—87 15—E. J. Kane

(Endorsed) Nov 7 1918

657 device Among these men were Mr. Maurice Kane, my
and
father, Mr. Wm. Cavanaugh, Mr. John S. Stewart, / I
think Mr. Haney, Foreign Sales Manager.

Which was all of the testimony given by the witness Edmund Joseph Kane.

EDMUND JOSEPH KANE.

39013—88

16—E. J. Kane.

(Endorsed) Nov 7 1918

658 MAURICE KANE the next witness called on behalf of the party Edmund Joseph Kane being first duly sworn on oath testifies as follows in answer to interrogatories propounded by counsel.

Q 1. Please state your name, age, residence and occupation.

A Maurice Kane, Age 67; Occupation, connected with the

International Harvester Company in an advisory capacity. Formerly was General Manager of the Experimental Department for the same concern. Residence, Chicago.

Q 2. Are you acquainted with Mr. E. J. Kane, who is a party to this interference?

A Yes, quite well acquainted with him. He is my oldest son.

Q 3. Will you please state what, if anything, you know about a low tension magneto ignition outfit invented and developed by your son some years ago?

A At the time that I had charge of the Experimental Department for the International Harvester Co. we were using magnetos on our engines purchased from the Webster Co. After my son Edmund Joseph got out of school he went to work for the Webster Co. The magnetos that we were using at this time were giving a great deal of trouble and we had a great deal of complaint from our agents in the country. Those complaints were generally submitted to me. We were having so many of them that I took the matter up with my son and asked him why they didn't do something to remedy
39013—89 1—Maurice Kane

(Endorsed) Nov 7 1918

659 the trouble. My recollection is that he said that, Of course, although he had been doing some work on them that that was not his particular job, although he recognized that they were having the trouble because he had been in the country a great deal looking after the magnetos and adjusting the same so that they would operate. I intimated to him that unless there was something done very soon we would have to quit using the Webster magnetos. As near as I can remember that was in the spring of 1909. Well, he said he would take the matter up right away and see what he could do. Very soon after that, as near as I can remember, it was the afternoon of that same day, he made some drawings and showed them to me. I, not being an expert on matters of that kind, I looked them over however, and suggested that he take them down and submit them to Mr. Webster, which he did. I remember talking it over with him, possibly the following day, and he stated that Mr. Webster was very much interested, and that he suggested going ahead and making a magneto along the line suggested in these drawings. Very soon after that the magneto was completed and tested out and seemed to give satisfaction, not only to the Webster

Co. but also to the Harvester Co., those of them that saw it.

Q 4. I hand you herewith a drawing marked in this case "Kane's Exhibit No. 7" and will ask you if you recognize the same.

A I have examined this drawing and recognize it as the drawing that I first saw and the one that I refer to.

Q 5. I show you a pamphlet marked "Kane's Exhibit No. 1" and will ask you to state what that shows if you know.

39013-90

2-Maurice Kane.

(Endorsed) Nov 7 1918

660 A I have looked over this pamphlet and examined the drawings referred to and recognize in this magneto the one that was made prior to the adoption of the E. J. Kane device; also as the magneto that gave so much trouble in the country, which was afterwards discarded and the Kane type of magneto substituted therefor.

Q 6. **(Did you ever see)* Were you ever present at a magneto test at the Fifteenth and Western Ave. plant of the Webster Mfg. Co.?

A Yes, I remember some time after these drawings were made they stated that they had a magneto completed and ready for test, and wanted somebody from the Harvester Co. to go there and see it in operation. As Manager of the Experimental Department of the Harvester Co. I went and there were also present from the International office Mr. Cavanaugh, who was my assistant in the Experimental Department, and Mr. John F. Stewart, who had charge of the patent work for the Harvester Co. Those are the only ones that I remember being there from the main office of the Harvester Co.

Q 7. Do you remember whether any employes of the Webster Mfg. Co. were present?

A Yes. There were my recollection Mr. Webster was there and E. J. Kane and some others, but I cannot recall their names.

Q 8. When did this test occur, as nearly as you can remember?

A I can't just exactly give the date, but I should say it was possible a month after I saw those original drawings.

39013-91

3-Maurice Kane

(Endorsed) Nov 7 1918

661 Q 9. At the time you witnessed these tests were you

*Matter in italics in parentheses, stricken out in original transcript.

informed as to who was the inventor or designer of the apparatus undergoing test?

A At the time that I went to see this it was generally understood who the designer was from the drawings that I saw and the magneto, the general understanding at our office where the drawings were submitted, all seemed to understand that E. J. Kane was the party. That didn't seemd to be questioned at all. Mr. Webster and the Superintendent of the International Harvester Co. at Milwaukee, Mr. Waterman, seemed to thoroughly understand that E. J. Kane was the inventor and designer of this particular type of magneto. In those early days nobody seemed to question that at all.

Q 10 I hand you herewith a pamphlet marked in this case "Kane's Exhibit No. 2" and will ask you to state what it shows, if you know?

A This shows the magneto as designed by E. J. Kane, made by the Webster Mfg. Co., and put out by the International Harvester Co. in large quantities since 1909.

Q 11 Do you know who issued this pamphlet?

A This pamphlet was issued by the International Harvester Co. of America. I remember this pamphlet very well as all pamphlets of, this kind were submitted to the Department of which I had charge for its approval before they were sent out, and I find in looking over this catalogue it is dated September 21, 1909. It is customary for the Harvester Co. in issuing pamphlets of this kind to print the date on so that 39013—92 4—Maurice Kane

(Endorsed) Nov 7 1918

662 their customers in the country in ordering extra parts can tell when the machine was built.

Q 12 I show you herewith a piece of apparatus marked "Kane's Exhibit No. 6" and will ask you to state what it is if you know?

A In looking over this magneto I recognize it as the one put out by the International Harvester Co. in 1909 and after.

Q 13 Are you acquainted with Mr. John L. Milton?

A Yes, Quite well. I met Mr. Milton when the Harvester Co. began using the magneto in connection with their engines. I couldn't give the exact date, but I know it was about that time.

Q 14. Did Mr. Milton ever intimate to you that he considered himself and that your son the inventor of the magneto construction exemplified in Kane's Exhibit No. 6?

A No sir. He never intimated anything of the kind.
Which was all of the testimony given by the witness Maurice Kane.

MAURICE KANE

39013—92

5—Maurice Kane

(Endorsed) Nov 7 1918

663

UNITED STATES PATENT OFFICE.

Edmund Joseph Kane

vs.

John L. Milton

} Interference No. 39,013.
}

NOTARIAL CERTIFICATE.

State of Illinois }
County of Cook } ss:

I, Mary A. Cook, a Notary Public in and for the County of Cook, and State of Illinois, do hereby certify that the foregoing depositions of Edmund Joseph Kane and Maurice Kane were taken on behalf of the party Edmund Joseph Kane in pursuance of the Notice hereunto annexed before me at 1315 Monadnock Block, Chicago, Illinois, on the 23d day of October 1916, that said witnesses were by me duly sworn before the commencement of their testimony; that the testimony of said witnesses was written out by Miss Kathleen W. Hutton in my presence; that the opposing party was not present nor represented by counsel during the taking of said testimony; that the testimony was commenced at two o'clock P. M., on the 23d day of October 1916, and was concluded at five twenty o'clock on the same day; that each deposition was read by the witness giving it before the witness signed the same; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In Testimony Whereof, I have hereunto set my hand
39013—93

(Endorsed) Nov 7 1918

664 and affixed my seal of office at Chicago in the said County
this 23d day of October 1916.

MARY A. COOK

Notary Public.

(Seal)

My comm. expires April 16, 1920

39012—94

(Endorsed) Nov 7 1918

665

UNITED STATES PATENT OFFICE.

Edmund J. Kane }
versus } Interference No. 39013
 John L. Milton }

I hereby certify that the within deposition of Edmund Joseph Kane, Maurice Kane and Towner K. Webster, relating to the above-entitled interference, taken before me were sealed up and addressed to the Commissioner of Patents by me this 18th day of December, 1916.

(Kane Exhibit No. 7—Enclosed)

MARY A. COOK
Notary Public.

To the Commissioner of Patents
 Washington D. C.

(In the margin):

Williams, Bradbury & See
 1315 Monadnock Block
 Chicago

39013—95

(Endorsed) Nov 7 1918

666

UNITED STATES PATENT OFFICE.

Edmund Joseph Kane }
vs. } Interference No. 39,013.
 John L. Milton }

STIPULATION

Inasmuch as it has been impossible heretofore to secure the testimony of Towner K. Webster, Sr., on behalf of the party Edmund Joseph Kane, and whereas said Towner K. Webster, Sr., is now available and ready to testify, and whereas the parties hereto are desirous that the testimony of said witnesses be taken without resetting the times for taking testimony and final hearing, it is hereby stipulated and agreed by and between counsel for the parties hereto that the testimony of said Towner K. Webster, Sr., may be taken on Tuesday, November 28, 1916, before Mary A. Cook, or other competent officer, the testimony of said Towner K. Webster to have the same force and effect as if the same had been taken

before the 30th day of October 1916, that is, the time set for the testimony in chief of the party Kane to close.

WILLIAMS & BRADBURY
Attorneys for Kane.
LYNN A. WILLIAMS,
Attorney for Milton.

Chicago, Nov. 28-1916.
39013—97

667

UNITED STATES PATENT OFFICE.

Edmund Joseph Kane }
vs. } Interference No. 30,013.
John L. Milton }

Testimony taken on behalf of the party Edmund Joseph Kane this 28th day of November 1916, at ten-thirty o'clock A. M., before Mary A. Cook, Notary Public, in and for the County of Cook and State of Illinois, at the office of Williams, Bradbury & See, 1315 Monadnock Block, Chicago, Illinois.
Present:

Albert G. McCaleb on behalf of Kane.

TOWNER K. WEBSTER, being called on behalf of the party Edmund Joseph Kane being first duly sworn on oath testifies as follows in answer to interrogatories propounded by counsel for Kane.

Q 1. Please state your name, age, residence, and occupation.

A. My name is Towner K. Webster, legal age; Evanston, Illinois; President of the Webster Electric Company.

Q 2. With what business were you connected during the year 1909?

A. I was President of the Webster Mfg. Co.

Q 3. Where was the Webster Mfg. Co. located at that time?

Street

A. Fifteenth/and Western Avenue, Chicago.
39013—98

(Endorsed) Nov 7 1918

668 Q 4. Was the Webster Mfg. Co. engaged in the manufacture of low tension ignition magnetos at that time?

A. It was.

Q 5. Will you describe, generally, the type of ignition apparatus manufactured by the Webster Mfg. Co., during the early part of 1909?

A. It was a straight bar inductor magneto of the oscillating type. The magneto was designed to be mounted on a stud on an engine cylinder and was used in connection with make and break electrodes. The electrodes were operated through the agency of a rod extending from the magneto to the movable electrode arm.

Q 6. In this type of apparatus to which you have referred was it possible to remove the magneto without removing the electrodes and their plug and vice versa.

A. It was. Other than the operating link there was no mechanical connection between the magneto and the electrodes.

Q 7. I hand you herewith a pamphlet which has been marked "Kane's Exhibit No. 1" and will ask you to state what is shown thereon if you know?

A. This pamphlet shows the form of low tension ignition mechanism to which I have referred, the magneto being illustrated upon an International Harvester engine.

Q 8. Who was the principal purchaser of this form of apparatus?

A. The International Harvester Company.

Q 9. Was this form of apparatus entirely satisfactory?

A. No. It was not. We received various complaints from the officials of the International Harvester Company and 39013-99

-3-

(Endorsed) Nov 7 1918

669 I and the other officials in charge of the business of the Webster Mfg. Co. came to the conclusion that a new and better type of apparatus should, if possible, be designed.

Q 10. What form of ignition, if any, followed the one which you have stated did not exactly comply with the requirements of the International Harvester Company?

A. The Webster Mfg. Co. adopted and commenced the manufacture of a self-contained form of apparatus wherein the magneto was mounted directly upon an integral plug and bracket and wherein the movable electrode arm was engaged and operated directly by a yoke on the magneto shaft.

Q 11. Please state as near as you can the circumstances surrounding the development of this self-contained type of ignition apparatus to which you have referred.

A. It having been called to my attention, the defects of the

magneto which was located by means of a stud or attached to a stud on a cylinder, I called in two of our draftsmen and employees, Mr. Gerald Chiville and Mr. E. J. Kane and suggested that they draw up an improved design which would overcome the (*manifest*)* defects in the other design. When these two gentlemen presented their ideas a short time afterwards the design invented by Mr. Kane was manifestly superior to all the others and we adopted the same. The design submitted by Mr. Kane was of the self-contained type to which I have referred in a previous answer.

Q 12. After Mr. Kane had submitted his design and after it had been accepted by the Webster Mfg. Co., as you have explained, what steps, if any, were taken toward embodying Mr. Kane's ideas in operative form?

A. As near as I can recollect the manufacture of 39013—100

—3—

(Endorsed) Nov 7 1918

670 this machine in its first and preliminary form was turned over to Abbott Munn who was one of our employes and the patterns and sample machine was made.

Q 13. Was said sample machine satisfactory in its operation.

A. This machine was found to be a great improvement over the former design and resulted in our receiving large orders from the International Harvester Company.

Q 14. Prior to the time Mr. Kane submitted his design to you had you ever seen or heard of a low tension magneto construction of the unitary type, that is, one wherein the magneto was mounted on an integral plug and bracket and the movable electrode arm operated directly from the magneto rotor shaft as you have explained?

A. No.

Q 15. I hand you herewith a pamphlet which has been marked "Kane's Exhibit No. 2" and will ask you to state what is shown on pages 4 and 5 thereof if you know?

A. This is the type of apparatus embodying Mr. Kane's design which was manufactured in large numbers for the International Harvester Company beginning in the fall of 1909 and continuing for some considerable time thereafter.

Q 16. As near as you can recollect when did Mr. Kane submit his design to you and by what means to you fix the date?

*Matter in italics in parentheses, stricken out in original transcript.

A. The magneto business was moved to Tiffin, Ohio, in the early fall of 1909, as near as I can recollect in August, and Mr. Kane's design was submitted some considerable time prior to that time. It must have been some months before we went to Tiffin because considerable development work was
39013—101

—4—

(Endorsed) Nov 7 1918

671 done at the Chicago plant.

Q 17. I show you a piece of apparatus marked "Kane's Exhibit No. 6" and will ask you to state what it is, if you know?

A. This is the form of apparatus illustrated in the pamphlet "Kane's Exhibit No. 2" and is the form of apparatus which was designed by Mr. Kane and manufactured by the Webster Mfg. Company and placed upon the market by the International Harvester Company.

Q 18. Do you know what has become of the first machine of the Kane type constructed by the Webster Manufacturing Company?

A. I do not.

Q 19. I notice that the pamphlet "Kane's Exhibit No. 5" bears the legend "Milton Magneto." Can you explain why this form of apparatus was designated by that name?

A. The magneto proper was given a trade name of "The Milton" and when we adopted the new form of attaching it to an engine the name was not changed. Mr. Milton was the inventor or designer of the tri-polar type of inductor magneto and he has patents on it. This form of magneto was used in connection with Mr. Kane's improvements.

Q 20. Who attended to the details with respect to obtaining patents on magneto designs developed by employes of the Webster Mfg. Co.?

A. The Webster Mfg. Co. had various patent attorneys and the applications were, of course, filed by them. I kept in general touch with the patent matters but the matter of signing the papers and the names in which applications were to be filed was left largely up to our engineer Mr. John L. Milton who had a rather free hand in these matters.

39013—102

—5—

(Endorsed) Nov 7 1918

672 Q 31. As near as you can recollect what were Mr. Milton's duties during the year 1909?

A. Mr. Milton was chiefly employed in improving and designing a high tension magneto.

Which was all of the testimony given by the witness Towner K. Webster.

TOWNER K WEBSTER

(Endorsed) Nov 7 1918

673

UNITED STATES PATENT OFFICE.

Edmund Joseph Kane }
 vs. } Interference No. 39,013.
John L. Milton. }

NOTARIAL CERTIFICATE

State of Illinois }
County of Cook } ss:

I, Mary A. Cook, a Notary Public in and for the County of Cook, and State of Illinois, do hereby certify that the foregoing deposition of Towner K. Webster was taken on behalf of the party Edmund Joseph Kane in pursuance of the stipulation hereunto annexed before me at 1315 Monadnock Block, Chicago, Illinois, on the 28th day of November 1916, that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by Miss Kathleen W. Hutton in my presence; that the opposing party was not present nor represented by counsel during the taking of said testimony; that the testimony was commenced at ten-thirty o'clock A. M., on the 28th day of November 1916, and was concluded at eleven-fifteen o'clock on the same day; that the deposition was read by the witness before he signed the same; that I am not connected by blood or marriage with the parties, nor interested directly or indirectly in the matter in controversy.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of office at Chicago in the said County this 28th day of November 1916.

MARY A. COOK
Notary Public.

39013—104

(Endorsed) Nov 7 1918

674

UNITED STATES PATENT OFFICE

Edmund Joseph Kane
vs.
John L. Milton

} Interference No. 39,013.

STIPULATION

It appearing to counsel for the parties hereto that Gerald D. Chiville, whom the party Kane had intended to call on his behalf, has left Chicago, Illinois, and is now somewhere in California, and that it is practically impossible to secure the deposition of said Gerald D. Chiville before the date set for final hearing in the above entitled interference, it is hereby stipulated and agreed by and between counsel for the parties hereto that the instrument hereunto annexed is a duplicate original of an affidavit executed by the said Gerald D. Chiville on May 12, 1916. It is hereby stipulated that said affidavit may be used with the same force and effect as if the statements therein contained had been made in answer to interrogatories propounded by counsel.

It is furthermore stipulated that said Gerald D. Chiville if called as a witness on behalf of Kane would testify identically in accordance with the statements made in said affidavit.

It is furthermore stipulated that the copy of Milton patent No. 1,096,048 and the drawings of Kane's applications Serial Nos. 541,428 and 2097 referred to by said Gerald D. Chiville in his affidavit aforesaid were true and correct copies of said patent and application drawings.

WILLIAMS & BRADBURY
Attorneys for Kane.
LYNN A. WILLIAMS
Attorney for Milton.

Chicago, Oct 20, 1916
39013—105
(Endorsed) Nov 7 1918

675

AFFIDAVIT
OF
GERALD D. CHIVILLE

Regarding Interference Between Milton and Kane
As to Inventorship of Certain Magneto Construction.

State of Illinois }
County of Cook } ss:

GERALD D. CHIVILLE, being duly sworn, says:

I am a resident of Chicago, Illinois, residing at 3449 Elaine Court, and am engaged in the care and operation of automobiles at 1442 North Dearborn Street. I know of the Webster Electric Company of Racine, Wisconsin, and am familiar with the oscillating inductor magneto manufactured and sold by the Webster Electric Company.

In the latter part of 1908 or the early part of 1909 I entered the employ of the Webster Manufacturing Company at Chicago, Illinois, which was then engaged in the manufacture of oscillating magnetos. The business of this company early in 1909 was taken over and continued in the same place by the Hertz Electric Company, which later changed the name to the Webster Electric Company, this being the company now located at Racine. In or about July 1909 and shortly following July, the company moved its magneto business from Chicago to Tiffin, Ohio, and I went to Tiffin and continued my work
A. G. M. there, leaving the employ of the company about
N. P.—August 1911, since which time I have had no connection whatever with the company.

When I entered the employ of the Webster Manufacturing Company in Chicago in the latter part of 1908 or early in 1909, John L. Milton was in general charge of the engineering work connected with the magneto business, Abbott Munn was in direct charge of the "experimental work, Edmund J. Kane, was in

39013—106

(Endorsed) Nov 7 1918

676

the employ of the company working as salesman and also in experimental and drafting work. Mr. Milton and I were devoting most of our time to high tension magnetos, while Mr. Kane devoted most of his attention to low tension magnetos.

When I entered the employ of the company and until some time in the spring or early summer of 1909 the company was manufacturing a low tension magneto, in which the magneto was attached to a boss on the side of the engine cylinder, and an arm on the inductor was connected with an arm on the movable contact shaft by a long rod or link.

In the spring of 1909 Mr. T. K. Webster, Sr., the president of the company, asked Mr. Kane and me to see if we could not design some unitary structure by which the spark plug carrying the contacts and also the inductor generator could be mounted together on a single support, so that they could be removed from the engine and replaced without affecting the adjustment between them. I recall that Mr. Webster told Mr. Kane and me to take a few days off from our other work, if necessary, and work independently of each other on this design at home. To the best of my recollection I had never before heard any suggestion of such a unitary structure nor of any means for operating the movable contact except by a link pivoted to arms on the contact shaft and on the inductor shaft.

A few days later Mr. Kane and I both submitted our design. I produced a design with the magneto supported above the plug, but my design was rejected. Mr. Kane submitted a drawing showing a construction in which the magneto was supported out beyond the end of the plug by a bracket or bearing integral with the spark plug. The inductor shaft carried a yoke having an arm to be struck by a rod driven by the engine, thus tripping the inductor which was returned to normal position by springs secured to the yoke. An arm on the movable contact shaft carried an adjustable screw which

677

was struck by the curved surface of one arm of the yoke when the yoke snapped back. A light spring tended to hold this adjustable screw in contact with the yoke.

To the best of my recollection it was about April 1909 that Mr. Kane and I were working on this proposition. I have examined a printed copy of patent No. 1,096,048, issued May 12, 1914, to John L. Milton, also the drawings of the Kane patent applications Serial No. 541,428 and Serial No. 2097. The Milton patent and the Kane application drawings each illustrate the construction which, to the best of my recollection and belief, is the construction designed by Mr. Kane as aforesaid.

The construction which Mr. Kane designed as aforesaid was submitted to the proper authorities including, I believe, Mr. Webster and Mr. Milton, and was accepted, and some time afterward working drawings of this construction were made and devices in accordance therewith were built, and their manufacture and sale by the company was thereafter continued, the older type before referred to being discontinued. This change from the old type to the Kane type occurred some months before the company moved to Tiffin, Ohio. To the best of my knowledge no such construction as that designed by Mr. Kane had been suggested or designed by anyone prior to its production by Mr. Kane.

GERALD D. CHIVILLE

Subscribed and sworn to before me this 13th day of May, A. D. 1916.

ALBERT G. McCALEB
Notary Public.

39013—108

—3—

(Endorsed) Nov 7 1918

448

Defendants' Exhibit No. 49.

678

39013—35,

W. F.
2—298

Address only the Commis-
sioner of Patents, Wash-
ington, D. C.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

December 20, 1916.

In the Matter of the Interference of	} Before the Exam- iner of Interfer- ences No. 39,013.
Kane	
<i>vs.</i>	
Milton	

and

You are hereby informed that the testimony, exhibits, (*and printed record*)* in behalf of Edmund J. Kane have been received and filed.

Very respectfully,

W. F. WOOLARD,
Chief Clerk

Edmund J. Kane, c/o
Williams & Bradbury,
720 Monadnock Block,
Chicago, Ill.

39013—110

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

679

#39013—36.

UNITED STATES PATENT OFFICE

(Rubber Stamp) Docket Clerk Dec 26 1916 U S Patent Office

Edmund Joseph Kane
 vs.
John L. Milton } Interference No. 39013

Testimony & Exhibits for Kane *infra* and Section 28,

NOTICE

1315 Monadnock Block,
Chicago, Illinois.

Lynn A. Williams, Esq.,
1315 Monadnock Block,
Chicago, Ill.

Dear Sir:

Please take notice that on Friday, October 20, 1916, beginning at 1:30 P. M., we shall proceed to take testimony in behalf of the party Kane at the office of the Webster Electric Company, Racine, Wisconsin, before James Norton Bour, Notary Public in and for the County of Racine and State of Wisconsin. Under this notice we expect to examine Abbott Munn, Arthur Charles Kleckner and Ernest Bruce, all of Racine, Wisconsin.

You are invited to attend and cross examine the witnesses produced.

Respectfully,

WILLIAMS & BRADBURY
Attorneys for Kane.

Chicago, Ill.,
October 17, 1916.

Due and timely service of the above notice is hereby acknowledged this 17th day of October, 1916

LYNN A. WILLIAMS
Attorney for Milton.

39013—109

(Endorsed) Nov 8 1918

680

UNITED STATES PATENT OFFICE

Edmund Joseph Kane }
v. } Interference No. 39,013.
John L. Milton. }

Testimony taken on behalf of the party Edmund Joseph Kane this 20th Day of October, 1916, beginning at 1:30 P. M., before James Norton Bour, Notary Public, in and for the County of Racine, State of Wisconsin, at the office of The Webster Electric Company, Racine, Wisconsin.

Present:

Albert G. McCaleb on behalf of Kane.

ABBOTT MUNN the first witness called in behalf of the party Kane, being first duly sworn on oath, testifies as follows in answer to interrogatories propounded by counsel for Kane.

Q 1— Please state your name, age, residence and occupation.

A— James Abbott Munn — 55 — Racine, Wisconsin machinist.

Q 2— By whom are you employed?

A— Webster Electric Company

Q 3— How long have you been in the employ of the Webster Electric Company?

A— Since The Webster Electric Company's inception. Formerly employed by the Webster Manufacturing Company, then by The Hertz Electric Company, name of which was later changed to The Webster Electric Company.

Q 4— By whom were you employed and where were you located in the early part of 1909.

A— Webster Manufacturing Company, 15th & Western Ave Chicago, Illinois.

39013—110 —Albert Munn—

(Endorsed) Nov 7 1918

681 Q 5— Was The Webster Mfg. Company manufacturing ignition magnetos at that time?

A— Yes.

Q 6— Please state briefly what kind.

A— We were manufacturing **(Type "G")* Magneto with separate igniter plug, connection made by a link.

Q 7— I hand you a pamphlet wherein is illustrated a piece of apparatus and will ask you if you know what it is.

A— Yes, this is the magneto that we were making at that time with link connection to plug—a Tri-Polar Oscillator.

Q 8— When you say that in the magneto shown in this pamphlet there was a link connection to the plug, do you mean that the link extended from the movable or oscillatory part of the magneto to the movable spark electrode supported by the plug?

A— Yes.

Q 9— In this type of machine was there any connection between the magneto and the plug or plug electrode, other than the link you have referred to?

A— No, that is, none other than the electrical wire connection.

Q 10— How long did the Webster Manufacturing Company continue to manufacture the type of apparatus shown by this pamphlet?

A— Until the self-contained plug **(was)* took its place, which **(was Q 11)* self-contained plug was developed and put on the market about the time the firm moved to Tiffin, Ohio.

By Mr. McCaleb—The pamphlet referred to by the witness is offered in evidence and the Notary Public is requested to mark the same "Kane's exhibit Number One—Pamphlet illustrating link type machine of 1909."

Q 11— I assume that the term "self-contained plug" is a shop name for some particular type of ignition apparatus. If so, will you kindly explain in general terms the construction of this apparatus and also explain how it differed from the construction shown in Kane's exhibit Number One?

the

A— In the self-contained type/ magneto is mounted on the plug itself, the oscillating member striking a arm on the 39013—111

—Abbott Munn—

(Endorsed) Nov 7 1918

the proper moment; The supporting bracket for the magneto were

and the plug itself/ formed in one casting. In the original construction **(the)* which is exemplified in Exhibit One, the movable electrode arm is actuated by a link or rod reaching from the magneto to the plug, the two being mounted on separate brackets. In the self-contained type the movable electrode is struck and opened by an arm on the moving shaft of the magneto.

Q 12— I hand you herewith a pamphlet and calling your attention particularly to illustration Numbers Four, Five and Six, appearing on pages Four and Five thereof, ask you to state what these illustrations show if you know.

A— This is the apparatus which followed in construction that shown in Exhibit One.

Q 13— You mean, do you, that the apparatus shown in Illustrations Four, Five and Six was placed upon the market by your employer after it had ceased to manufacture and sell the construction shown in Kane's Exhibit Number One?

A— Yes.

Q 14— What was your position with The Webster Manufacturing Company at the time this self-contained type of apparatus, to which you have referred, was placed upon the market?

A— Foreman of the Experimental Department.

Q 15— I hand you herewith a copy of patent to John L. Milton Number 1,096,048, and ask you if you recognize the apparatus shown on the patent drawings.

we manufactured

A— Yes. This is the construction/ **(worked out)* about the time we moved to Tiffin, Ohio.

Q 16— I hand you herewith a copy of the drawing of the Kane application involved in this interference, and will ask you if you know what it illustrates.

A— Yes, it is the construction we manufactured about the time we went to Tiffin, Ohio, and the same is shown in the Milton **(application for)* patent.

39013—112

—Abbott Munn—

(Endorsed) Nov 7 1918

683

—4—

By Mr. McCaleb—The pamphlet referred to by the witness in his answers to Questions Twelve and Thirteen is

*Matter in italics in parentheses, stricken out in original transcript.

offered in evidence, and the Notary is requested to mark the same "Kane's Exhibit Number Two—Pamphlet Illustrating Self-Contained Construction of 1909."

The copy of the Milton patent referred to by the witness **(is answered)* in his answer to Question Fifteen, is offered in evidence and the Notary is requested to mark the same "Kane's Exhibit Number Three—Copy Milton Patent Shown to Munn."

The copy of the Kane application drawing referred to by the witness is offered in evidence and the Notary is requested to mark the same "Kane's Exhibit Four—Copy Kane Drawing shown to Munn."

Q 17— I notice that both of the pamphlets to which you have referred, that is, Kane's Exhibits Numbers One and Two, bear the name of the International Harvester Company of America. Can you explain this?

A— The International Harvester Company ^{was} **(were)* our largest customer at that time, and these pamphlets illustrate our magnetos as attached to their engines. These pamphlets were evidently put out by them.

Q 18— When did you first hear of the magneto construction shown in Kane's exhibit Number Two, that is, the construction wherein the bracket which supports the magneto is formed integral with the plug carrying the electrodes, and wherein the movable electrode arm is operated by being engaged by a member carried with the oscillating or movable part of the magneto.

A— To the best of my recollection, some four or five months before we moved to Tiffin, Ohio. This construction was explained to me by Edmund Joseph Kane.

Q 19— When did you go to Tiffin?

A— August 13th, 1909.

Q 20— By whom was Mr. Kane employed at the time he explained this construction to you?

A— Webster Manufacturing Company.

Q 21— What were **(were)* Mr. Kane's duties at that time?

A— Our factory was at the corner of 15th and Western Avenue Chicago, and I worked on a bench on the fifth floor 39013—113

—Abbott Munn—

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

684

—5—

of what they called the new building. Edmund J. Kane was also in the employ of the Company and worked with me on the fifth floor in experimental work. In a room partitioned off on the fifth floor, which was really a stockroom, there was a desk at which Kane did some drawing.

Q 22— Please explain as fully as you can the circumstances surrounding the disclosure or explanation which you say Mr. Kane made to you.

A— About four or five months, as nearly as I can remember, before we moved the magneto plant to Tiffin, Ohio, Edmund J. Kane came to me and said that he believed that he could work out a self-contained magneto construction. That is, that he could devise a construction in which the spark plug and the magneto itself could be mounted together in one unitary structure so that they could be installed on an engine or removed without separating them. I told him he had better go ahead, and see what he could do along this line. Very shortly after this Kane did some drawing in designing this new construction at the desk in the stockroom on the fifth floor of the factory, and I watched him from time to time, as he proceeded with the drawings. Mr. Milton was away a great deal of the time, and I don't remember whether he saw Kane doing this drawing or not, or whether he made any comment on this construction or knew of it at the time it was being designed by Kane or not. A few days after Kane told me that he thought he could work out this self-contained construction, he showed me a complete **(working)* drawing which showed a construction substantially like that shown on Pages Four and Five of the International Harvester

shown
pamphlet— Kane's Exhibit Two, and also **(noted)* in Kane's drawings you showed me a few minutes ago.

Q 23— In your last answer you refer to Mr. Milton. Who was he, and what was he doing at the time Mr. Kane explained his self-contained arrangement to you?

A— Mr. Milton was in general charge of the Magneto Experimental Department, and my direct superior.

Q 24— Where did Mr. Milton make his headquarters at that time?

A— In the main office of the Company;—on the first floor of the main building, 15th and Western Avenue, Chicago. As

*Matter in italics in parentheses, stricken out in original transcript.

I told you before, Kane and I were on the fifth floor of the new building.

39013—114

—Abbott Munn—

685

—6—

Q 25—I hand you a large manila sheet with some pencil drawings thereon, and will ask you if you ever saw this drawing before.

A— Yes, it looks exactly like the one Kane showed me, and which I saw him working on.

Q 26— Do you mean the **(working)* drawing which in your answer to Question Twenty-Two you say was shown to you by Mr. Kane some four or five months before the magneto **(business)* plant was moved to Tiffin?

A— Yes.

at the time Mr. Kane first showed it to you

Q 27— Did you understand the construction and operation of the apparatus shown on this drawing?

A— Yes. Immediately after receiving the drawing, I had patterns and castings made and machined them up and finished up a combined bracket and plug similar to that shown in the drawing.

**(Q 28— Did you follow the exact details of this drawing)*

Q 28— Do you know what became of the first combined bracket and plug mentioned in your last answer?

A— After the plug was completed and tried out, fully equipped with a magneto, on an engine having a push rod, I don't know what became of it.

Q 29— When the bracket and plug was completed and tried out, fully equipped with the magneto, did the combination operate successfully?

A— It did, perfectly.

Q 30— Were you present at these tests?

A— Yes, I conducted them personally.

Q 31— Who were present at these preliminary tests, as near as you can recollect?

Edmund Joseph

A— Mr./Kane, Mr. Cavanaugh, Mr. Joseph Kane's father, and myself. Those are all that I remember. There might have been others, but I don't remember.

Q 32— Do you remember ever having talked with Mr. Milton about this arrangement which Mr. Kane disclosed to you

*Matter in italics in parentheses, stricken out in original transcript.

and which you incorporated in the sample machine as you have just explained?

A— No, Possibly he did so, but I don't remember. I am absolutely certain that Mr. Milton did not say anything to me before Mr. Kane explained his idea to me.

39013—115

—Abbott Munn—

(Endorsed) Nov 7 1918

686

—7—

Q 33— How soon after this first sample was made and tested out did The Webster Manufacturing Company start to manufacture these devices for sale?

A— Some time before August, 1909, before we went to Tiffin, we began manufacturing magnetos for the International Harvester Company to go on brackets **(of this kind)* provided with integral plugs similar to sample we made up. We furnished magneto, inductor, shaft springs and spring arm, while they furnished the bracket and its integral plug. and bracket

The plug/ as made by them included electrodes, electrode arm, contact screw and spring, all as shown in Kane' Exhibit Number Two.

Q 34— Did the Webster people continue to manufacture these devices for the International Harvester Company, as explained in your answer to Question Thirty-Three, after the plant was moved to Tiffin?

A— Yes. The majority of our output was taken after we moved to Tiffin. We sold them altogether a good many thousand, within a year or two, after we went to Tiffin.

Q 35— What was the name of the company after the plant was moved to Tiffin?

A— Hertz Electric Company, afterwards changed to The Webster Electric Company.

Q 36— Did the company continue to make any of the old link type machines of Kane's Exhibit Number One after the plant was moved to Tiffin?

A— I don't think so. Possibly there were a very few manufactured but if so the number was extremely limited.

Q 37— I show you a piece of apparatus and ask you if you know what it is?

A— **(The magneto is manufactured by us.)* Yes, the in-

*Matter in italics in parentheses, stricken out in original transcript.

was
tegral plug and bracket *(were) made by the International Harvester Company, and the rest by us.

Q 38— How does this apparatus differ, if at all, from that which Mr. Kane explained to you some time before you went to Tiffin, and which you incorporated in the sample machine?

A— There is no difference, except that it contains a cut-out arm which Mr. Kane's did not. Mr. Kane's arrangement had a different feature for cutting out the *(plug) spark, which was not on the bracket.

39013—116 —Abbott Munn—

(Endorsed) Nov 7 1918

687

—8—

Q 39— When was this apparatus made?

A— I can't say definitely—probably within a year or so after we went to Tiffin.

*(Q 40— Did Mr. Kane, that is, Mr. P. J. Kane, claim the arrangement shown on the drawing, Kane's Exhibit ever tell you that the self-contained construction was his invention)

Q 40— Did Mr. John L. Milton ever tell you that he was the inventor of the self-contained construction about which you have been testifying?

A— He never did.

Q 41— Was Mr. Milton, so far as you know, concerned at all in the development of this self-contained low tension oscillator construction?

A— The magneto itself was Milton's construction, but integral

the/ plug and bracket he had no hand in developing—certainly not before Kane told me of his idea. Kane also, as far as I know, was the only one who ever suggested that the yoke or spring arm open the electrodes direct by engaging an adjustable screw carried by the electrode arm.

Q 42— Are you acquainted with Mr. Emil Podlesak?

A— Yes, he *(came) entered the employ of the Webster Company after *(Q 43) Kane had designed this device. The name of the Company may have been Hertz Electric when Podlesak came.

By Mr. McCaleb—The Drawing referred to by the witness in his answers to Questions Twenty-five and Twenty-Six is offered in evidence and the Notary is requested to mark the

*Matter in italics in parentheses, stricken out in original transcript.

same "Kane's Exhibit Number Five—Kane's Manila paper Drawing."

The apparatus referred to by the witness in answer to Questions Thirty-Seven, Thirty-Eight and Thirty-Nine is offered in evidence and the Notary is requested to mark the same "Kane's Exhibit Number Six—International Harvester Machine."

Which was all the testimony given by the witness Abbott Munn.

J. A. MUNN

8

39013—117 —Abbott Munn—
(Endorsed) Nov 7 1918

688

—9—

ARTHUR CHARLES KLECKNER the next witness called in behalf of Kane, being duly sworn, on oath testifies as follows in answer to interrogatories propounded to him by counsel for Kane.

Q 1— Please state your name, age, residence and occupation.

A— Arthur Charles Kleckner, 26, Racine, Wisconsin, employed by The Webster Electric Company as Engineer.

Q 2— When did you enter the employ of the Webster Electric Company?

A— In August 1909.

Q 3— Where was the company located at that time?

A— At Tiffin, Ohio.

Q 4— Do you know how long the company had been located in Tiffin before you entered its employ?

A— They were in the process of moving from Chicago at the time I entered their employ.

Q 5— What was the company manufacturing at the time you entered its employ?

A— The Type "F" Oscillating Magneto for use on the International Harvester Company's engine.

Q 6— How, if at all, did the Type "F" magneto to which you have referred differ from the machine illustrated on pages Four and Five of the pamphlet which I now hand you, and which bears legend "Kane's Exhibit Number Two."

A— The pamphlet illustrates exactly the Type "F" magneto to which I have referred.

Q 7— Did The Webster Electric Company make the entire equipment at that time?

A— No, only the magneto proper, the igniter plug and operating mechanism being manufactured and furnished by the International Harvester Company.

Q 8— Did you ever see one of the complete units embodying the Type "F" magneto such as you testify is illustrated 39013—118

—A. C. Kleckner—

(Endorsed) Nov 7 1918

689

—10—

on Pages Four and Five of Kane's Exhibit Number Two?

A— Yes, I saw a number of these soon after entering the employ of The Webster Electric Company.

Q 9— Now I hand you a piece of apparatus which is marked "Kane's exhibit Number Six" ask you to state what it is if you know.

A— This is a Type "F" magneto, mounted on the igniter plug to which I have referred.

Q 10— Who was in charge of the plant at Tiffin when you entered the employ of the Webster Electric Company at Tiffin, Ohio?

A— At this time this Company was known as The Hertz Electric Company—T. K. Webster, Jr., was in charge although Emil Podlesak Was Works Manager, and in charge of the Experimental and Design Work.

Q 11— Do you know who invented the particular combination of parts including the Type "F" magneto, and plug and bracket as shown on Pages Four and Five of Kane's Exhibit Number Two, and exemplified by Kane's Exhibit Number Six?

A— No, but I was informed by Emil Podlesak and others/ in the employ of the company at the time, that this combination was invented by Mr. Joseph Kane.

Q 12— Did you know Mr. Kane at that time?

A— Yes, he was located at Tiffin.

*(Q 13—)

Which was all the testimony given by the witness, Arthur Charles Kleckner.

*(A. C. Kleckner.)

ARTHUR CHARLES KLECKNER.

39013—119

—A C Kleckner—

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

ERNEST BRUCE the next witness called in behalf of Kane, being first duly sworn on oath testifies as follows in answer to interrogatories propounded by counsel for Kane:

Q 1— Please state your name, age, residence and occupation.

A— Ernest, Bruce, 40, Racine, Wisconsin—Superintendent of The Webster Electric Company.

Q 2— How long have you been employed by The Webster Electric Co.

A— Seven years last February.

Q 3— What was the name of the Company when you entered its employ.

A— Webster Manufacturing Company. It was changed to the name of The Hertz Electric Company and later to The Webster Electric Co.

Q 4— What sort of magneto was the Webster Electric Company putting upon the market when you entered its employ in February 1909?

A— The Company was making a low tension ignition magneto, or what we called the Type "D" which comprised a field frame consisting of two **(polar projections, each)* pole pieces each having three projections and a generating winding on the middle projection of each pole piece. The ends of the pole pieces were connected **(with)* by straight bar magnets. The magneto also comprised an inductor in the shape of a Maltese Cross which was mounted on a shaft between the pole pieces, and was held in a certain position by a pair of large springs. The shaft which carried the inductor was provided with a push finger so that a rod driven by an engine might engage the push finger to oscillate the inductor shaft and release it. This Type "D" magneto was sold by The Webster Manufacturing Company to the International
the

Harvester Company. The magneto being of/ **(a)* low ten-
make and break
sion type was used in connection with/ **(making brake)* electrodes. The International Harvester Company operated the
or rod

movable electrode by a link/ extending from the inductor to the movable electrode arm.

*Matter in italics in parentheses, stricken out in original transcript.

Q 5— I hand you a pamphlet marked "Kane's Exhibit Number One" and ask you to state what it illustrates if you know.

A— This pamphlet shows a magneto that looks just like the Type "D" machine made by The Webster Manufacturing Company at that time.

39013—120

—Ernest Bruce—

(Endorsed) Nov 7 1918

691

—12—

Q 6— What were your duties at the time you entered the employ of the Webster Manufacturing Company in 1909?

A— When I first entered the employ of the Company I started in on experimental work with high tension magnetos, but shortly afterward I became foreman of the manufacture of low tension magnetos, and went to Tiffin, Ohio when the plant was moved to Tiffin in the early Fall of 1909. The business was done in the name of the Hertz Electric Company **(shortly before and some time)* after the removal to Tiffin. Finally the name was changed to The Webster Electric Company.

Q 7— Was Mr. John L. Milton with the Webster Company when you entered its employ, in 1909?

A— Yes, sir. He was in charge of the Engineering work but was devoting most of his time to experimental work with high tension magnetos.

Q 8— Where did Mr. Milton have his office at that time?

A— He had a desk in the main office.

Q 9— Where was the main office?

A— On the first floor of the factory.

Q 10— Was Mr. E. J. Kane in the employ of the company at that time.

A— Yes, sir.

Q 11— What was Mr. Kane doing and where was he located in the Company's plant?

A— I think he was salesman among other things, but he had a drawing table up on the fifth floor of the factory where Abbott Munn was located.

Q 12— What was Mr. Munn doing at that time?

A— Munn was practically in charge of experimental work on magnetos of the low tension type, and E. J. Kane worked along with Munn although I do not know just what work he

*Matter in italics in parentheses, stricken out in original transcript.

did, although I understood he was a salesman, and helped remedy troubles with customers' magnetos.

Q 13— How long did the Webster Company continue to manufacture Type "D" magnetos of the type shown in Kane's Exhibit Number One.

A— Shortly before the magneto plant was moved to Tiffin, the Company manufactured a new machine Type "F".

Q 14— How did this Type "F" machine differ from the type "D machine."

A— The Type "F" was smaller than the Type "D" and 39013—121 —Ernest Bruce—

(Endorsed) Nov 7 1918

692

—13—

the magneto frame was rounded at its ends. This magneto was designed to be used upon an integral plug and bracket so that the magneto was supported from the plug on the bracket and so that the yoke or spring arm on the magneto shaft could make direct contact with an adjustable screw in a small arm on the movable electrode. The Webster Manufacturing Company made only the magnetos, as far as I remember, and the integral plug and bracket was made by the International Harvester Company. However, on one occasion before the factory was moved to Tiffin, I remember one equipped with integral plug and bracket of these magnetos/ being tried out at the Webster factory, before a group of visitors. I think that they were from the International Harvester Company, and that one of them was the father of Mr. E. J. Kane.

Q 15— I show you a piece of apparatus marked "Kane's Exhibit Number Six" and ask you to state what it is if you know.

A— That is the type "F" machine which we manufactured after dropping the Type "D". The manufacture of this machine was commenced before we went to Tiffin. This machine has the integral plug and bracket which I understood was manufactured by the International Harvester Company.

Q 16— Do you know who invented the combination of magneto and integral plug and bracket represented by the apparatus "Kane's Exhibit Six".

A— I do not.

*(Q 17—) testimony
Which was all of the/ *(witness) given by the witness,
Ernest Bruce.

39013—122 —Ernest Bruce—
(Endorsed) Nov 7 1918

ERNEST BRUCE

693 UNITED STATES PATENT OFFICE

Edmund Joseph Kane }
v. } Interference No. 39,013.
John L. Milton }

NOTARIAL CERTIFICATE.

State of Wisconsin, }
County of Racine. } ss

I, James Norton Bour, a Notary Public within and for the County of Racine and State of Wisconsin, do hereby certify that the foregoing depositions of Abbott Munn, Arthur Charles Kleckner and Ernest Bruce were taken on behalf of the party Edmund Joseph Kane in pursuance of the notice hereto annexed, before me at the office of the Webster Electric Company in the City of Racine, in said county, on the 20th day of October 1916; that said witnesses were by me duly sworn before the commencement of their testimony, that the testimony of said witnesses was written out by Miss Mabel Ferguson in my presence; that the opposing party was not present or represented by counsel during the taking of said testimony; that testimony was commenced at 1:30 P. M. on the 20th day of October 1916, and was concluded at 6:00 o'clock on the same day; that each deposition was read by the witness giving it before the witness signed the same; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In Testimony Whereof, I have hereunto set my hand and
39013—123
(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

694 affixed my seal of office at Racine in said county this 26 day of October, 1916.

JAMES NORTON BOUR,
Notary Public.

(Seal)

My commission expires March 23, 1919.

39013—124

(Endorsed) Nov 7 1918

695

UNITED STATES PATENT OFFICE

Edmund J. Kane	}	Interference No 39,013
<i>versus</i>		
John L. Milton		

I hereby certify that the within depositions of Abbott Munn, Arthur Charles Kleckner and Ernest Bruce, relating to the above-entitled interference, taken before me, were sealed up and addressed to the Commissioner of Patents by me this 21st day of December, 1916

JAMES NORTON BOUR,
Notary Public.

Exhibits:

Kanes	Exhibit	No 1
"	"	No 2
"	"	No 3
"	"	No 4
"	"	No 5

39013—126.

(Endorsed) Nov 7 1918

696

39,013—37.

W. F.
2—208

Address only
The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

December 27., 1916.

In the Matter of the Interference of }
Milton } Before the Examiner of
vs. } Interferences.
Kane } No. 39,013.

and

You are hereby informed that the testimony, exhibits,
*(and printed record) in behalf of Edmund J. Kane have
been received and filed.

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

Edmund J. Kane, c/o
Williams & Bradley,
#720 Monadnock Block,
Chicago, Ill.

6—1962

39013—127

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

W. F.
2—208

Address only
The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

January 4, 1917.

In the Matter of the Interference of	} Before the Examiner of Interferences. No. 39,013.
Kane	
vs. Milton	

You are hereby informed that the **(testimony, exhibits, and)* printed record in behalf of Edmund J. Kane have been received and filed.

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

Edmund J. Kane, c/o
Williams & Bradbury,
#720 Monadnock Block,
Chicago, Ill.

6—1962

39013—128

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

721 TESTIMONY AND EXHIBITS FOR MILTON
(IN BOX)

39,013—40

UNITED STATES PATENT OFFICE

Edmund Joseph Kane }
 vs. } Interference No. 39,013.
John L. Milton }

(Rubber stamp) Docket Clerk Jan 11 1917 U. S. Patent
Office

STIPULATION

Inasmuch as John L. Milton, whose patent No. 1,096,048 is involved in this interference, has been unable to testify heretofore and whereas it appears that said John L. Milton is today in Chicago and is willing to testify, it is stipulated and agreed by and between counsel that the testimony of said John L. Milton may be taken today, Thursday, January 4, 1917, before Mary A. Cook, Notary Public, or other competent magistrate, the testimony thus given to have the same force and effect as if it had been given before the expiration of the time set for Milton's testimony to close.

WILLIAMS & BRADBURY
Counsel for Kane.

LYNN A. WILLIAMS
Counsel for Milton.

Chicago, Ill.,
January 4, 1917.
39013—129

(Endorsed) Nov 7 1918

722

UNITED STATES PATENT OFFICE

Edmund Joseph Kane }
vs. } Interference No. 39,013.
John L. Milton }

Testimony taken on behalf of the party John L. Milton this 4th day of January, 1917, beginning at 4:30 P. M., before Mary A. Cook, Notary Public, in and for the County of Cook, State of Illinois, at 1315 Monadnock Block, Chicago, Illinois.
Present: Albert G. McCaleb, on behalf of Milton.

JOHN L. MILTON, being called in his own behalf, after being duly sworn, on oath testifies as follows, in answer to interrogatories propounded by counsel.

Q. 1. Please state your name, age, residence and occupation.

A. John L. Milton; 41; Cleveland, Ohio; electrical engineer.

Q. 2. Are you the John Lewis Milton whose patent No. 1,096,048 is involved in this interference controversy?

A. I am.

Q. 3. Do you understand the construction and mode of operation of the device recited in the six claims of your said patent?

A. I do.

Q. 4. Will you please state in detail the circumstances surrounding your invention and development of the mechanism which forms the subject matter of these claims?

39013—130 —1—

(Endorsed) Nov 7 1918

723

John L. Milton

A. Prior to 1905 and during a part of 1905 I had been working with electrical ignition for internal combustion engines, principally of the stationary engine type, and had developed and experimented with what I thought to be new principles of ignition and which I later found was the subject of a group of patents that at that time was under the control of a man by the name of Curtain, who had effected a working license arrangement with the Webster Manufacturing Company in Chicago. At this particular time I was located in

New York and got in touch with Harry Alward who had done some work for this man Curtain and was the patentee of an inductor alternator for ignition purposes. This device had been offered to the public under the trade name of "Auto-Igniter" consisting of permanent magnets between which an iron disk revolved. One pole of the permanent magnet was bifurcated and had a coil or wire surrounding one of the divisions. The other pole of the magnet was plain. This device was more completely developed than the device that I had worked at. Mr. Alward informed me of the license arrangement above referred to. I made a trip to Chicago to call on Mr. T. K. Webster and explained my above given experience and effected a working arrangement with him for the selling and developing of this apparatus. At once I found that it had some serious mechanical defects. This started a long series of developments and experiments. Between this time and the development of the patent which is the subject of controversy I developed some four or five different magnetos and various methods of operating. This particular device is a direct result of some complaints made on some

39013—131

—3—

(Endorsed) Nov 7 1918

724

John L. Milton

of the earlier types that were in operation. One of my magnetos which had been in operation at the International Harvester Engine Works, Milwaukee, had been mounted by a Mr. Charles Longnecker so as to be operated by a reciprocating device. This magneto was a large square type carrying straight bar permanent magnets. This device was expensive and rather unsightly. The next step was to mount the magneto closer to the spark plug mechanism and get a direct instead of an indirect thrust on the magneto operating lever which was in turn connected to the spark mechanism by a yielding link or rod. Quite a number of these were put into operation and sold by the International Harvester Company, the principal trouble with this device being that the weight of the magneto would break off the boss which was cast on the cylinder wall. To effect a more secure mounting I made a number of efforts to mount the magneto directly on the spark plug.

According to my best knowledge and belief I conceived the subject matter of the claims in this case on or about the 15th day of August 1908, at which time I believe I started sketches

and drawings and followed this with various modifications, and finally got it in form for actual construction. The first models were tried out on the horizontal stationary International Harvester engine. After we had these samples working to our satisfaction we had Messrs. Cavanaugh, Kane and Stewart, of the International Harvester Company come out to the factory and exhibited the engine to them on the fifth floor. This resulted in our sending samples to their Milwaukee works for further test.

39013—132

—3—

(Endorsed) Nov 7 1918

725

John L. Milton

Q. 5. When, as nearly as you can recollect, was the first machine corresponding to the counts of this interference tested out?

A. I have before me a blue print, the tracing of which was made by Mr. C. D. Chiville and is dated July 15, 1909, which is the same print that I delivered to Mr. Lynn A. Williams in Detroit on October 6, 1915. This print shows the complete ignition device in the form in which it was delivered to the International Harvester Company as our standard product, and I should say that we made our first test and sent out our first machines some months prior to this. About this time the Webster Electric Company was formed and they were establishing their plant at Tiffin, Ohio. During the second week in August I was in Tiffin, Ohio, for two or three days on my way to New York, from which place I sailed for Europe about the middle of August, and this machine was left in what was then believed to be commercial form ready for general manufacture.

I have before me a photograph which I took with me to Europe in August 1909, on which I printed in pen and ink the following: "Milton Magneto, Confidential". This was done at the suggestion of Mr. Adams of the law firm of Marks & Clerk. I had copies made of this photograph and left them with a few of the English manufacturers. This notation was made on the photograph for reasons given by the patent attorneys, their instruction being that the patent had not been applied for in Great Britain. Very shortly after my arrival in London, Marks & Clerk started preparation of the British patent

39013—133

—4—

(Endorsed) Nov 7 1918

726

John L. Milton

application which was filed on October 28, 1909. Prior to my departure for Europe I had tools made by the V. & O. Press Company of Brooklyn, New York, for the production of this magneto. These were shipped to Europe together with a special V. & O. punch press for handling these tools about the time of my departure. I personally inspected these tools just before sailing. These tools and the machine were lodged with Messrs. Elliott Brothers at their Century Works in London, and active production was started on these magnetos prior to my return to America, which was in December of 1909.

The photograph and blue print to which reference has just been made are one and the same machine and built exactly in accordance with the claims of the Milton patent herein involved. The photograph referred to shows a horizontal type of International Harvester engine and shows very plainly the Milton magneto and some of the tripper mechanism.

By Mr. McCaleb: The blue print referred to by the witness in his last answer is offered in evidence and the Notary is requested to mark the same, "Milton's Exhibit No. 1, Blue Print of Tracing of July 15, 1909." The photograph referred to by the witness is offered in evidence and the Notary is requested to mark the same, "Milton's Exhibit No. 2, Photograph of Milton Magneto applied to International Harvester engine."

Q. 6. Have you any of your early sketches of the mechanism involved in this interference?

A. This work was done substantially eight years ago, during which time I have lived in Chicago, Louisville, Tiffin, Anderson, Detroit, and I am now living in Cleveland. As this case was issued into a formal patent I treated

39013-134

-5-

(Endorsed) Nov 7 1918

727

John L. Milton

it as a settled matter and did not make any particular effort to hold on to my early sketches. However, I still have some blue prints and data pertaining to some of my early work on ignition that was left at Louisville. This I have not examined for years and do not know exactly what is in it.

Q. 7. Will you please state the reason why you did not file an application in the United States on the invention in this

case until a year after the application for the same invention was filed in Great Britain?

A. For several months prior to my trip to England the subject of foreign rights had been under a serious and bitter discussion between the Webster Manufacturing Company, my associate, Mr. Walter C. Teagle, and myself. This brought about considerable estrangement between the personnel of the Webster Company and myself, and it was some months after I returned from Europe before we again started working together. During all of my connection with the Webster Company, which embraced this period, I had a patent contract with them and the applying for patents was a matter that was at the dictation of the Webster Company.

Q. 8. Please state whether you are acquainted with Mr. Edmund Joseph Kane, whose application is involved in interference with your patent.

A. Yes, I am acquainted with Mr. E. J. Kane.

Q. 9. Now, please state what, if anything, to your knowledge Mr. Kane had to do with the invention and development of the mechanism forming the subject matter of the claims involved in this interference.

39013—135

—6—

(Endorsed) Nov 7 1918

728

John L. Milton

A. During the summer of 1908 Mr. E. J. Kane was finishing a power boat in which he had mounted a gasoline engine. At the suggestion of his father he came out to the Webster Manufacturing Company, then situated at 15th and Western Ave., Chicago, and had a talk with me on the subject of ignition for his engine. We loaned him a magneto which he subsequently installed in his boat. During the Illinois State Fair held at Springfield in September of this same year Mr. Maurice Kane, father of Mr. E. J. Kane approached me on the subject of employing his son at the Webster Manufacturing Company on the electrical ignition work which I was then conducting and in which Mr. Kane, Sr., had manifested considerable interest. He stated that his son had just finished his course at school and he was anxious for him to get a knowledge of this kind of work. This conversation took place in the tent of the International Harvester Company at the Fair mentioned. Mr. E. J. Kane came to work for the Webster Company shortly after this time. He was employed for

making installations and carrying out instructions on development work which included some drafting. He made various applications of our magnetos to stationary engines and conducted tests. The invention as set forth in the claims of this Milton patent No. 1,096,048 are in no wise the product of any suggestions set forth by Mr. E. J. Kane or anyone else and I firmly believe myself to be the original inventor.

39013—136

—7—

(Endorsed) Nov 7 1918

729

John L. Milton

Q. 10. Will you please state why you have not given your testimony in this interference at an earlier date?

A. When I was first asked to give my testimony by Williams, Bradbury & Sec, we were just in the process of moving the entire factory and offices of the Motor Ignition & Devices Company to Cleveland, Ohio. This was later followed by the moving of my family and household effects which consumed a good deal of energy. Simultaneously with this work I had to do a great deal of very important traveling for my company. Following this I was ill and confined to the house for an extended period. I have not been actively connected with the Webster Manufacturing Company or the Webster Electric Company for at least five years. I have been completely occupied with business entirely separate and distinct from any Webster interest for the entire period that I have been away from them and had completely dismissed from my mind the apparatus and business affairs of the Webster Companies, and at the immediate moment I am giving this testimony by a chance appointment and did not come here prepared with any of my personal records. I may add that I am giving this testimony at the request of the attorneys for the Webster Electric Company, and that is necessarily hurried owing to the fact that we had a very short period in between appointments that pertain to my active business, and at this moment I am several minutes past due on my next appointment, immediately following which I am to catch my train for Cleveland, Ohio.

JOHN LOUIS MILTON

39013—137

—8—

(Endorsed) Nov 7 1918

730

UNITED STATES PATENT OFFICE

Edmund Joseph Kañe }
 vs. } Interference No. 39,013.
 John L. Milton }

NOTARIAL CERTIFICATE.

State of Illinois, County of Cook, ss.

I, Mary A. Cook, a Notary Public in and for the County of Cook, and State of Illinois, do hereby certify that the foregoing deposition of John L. Milton was taken on behalf of stipulation the party John L. Milton, in pursuance of the **(notice)* ^ hereunto annexed, before me, at 1315 Monadnock Block, Chicago, Illinois, on the 4th day of January, 1917; that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by Miss Harriet A. Bookhagen in my presence; that the opposing party was not present nor represented by counsel during the taking of said testimony; that the testimony was commenced at 4:30 o'clock P. M., on the 4th day of January, 1917; that the deposition was read by the witness giving it before the witness signed the same; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of Office at Chicago, in the said county, this 4th day of January, 1917.

MARY A. COOK

My commission expires April 10, 1920.

(Seal)

39013—138

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

731

UNITED STATES PATENT OFFICE

Edmund J Kane }
 versus } Interference
John L. Milton } No. 39,013

D. O. C.

(Rubber Stamps) Mail Room Jan 11 1917 U. S. Patent Office. Docket Clerk Jan 11 1917 U. S. Patent Office.

I hereby certify that the within deposition of John A. Milton relating to the above entitled interference was taken, sealed up by me and addressed to the Commissioner of Patents this 8th day of January 1917.

MARY A COOK
Notary Public.

Exhibits:
Milton's Exhibit 1.
 " " 2.

(Endorsed) Nov 7 1918

39013—139

476

Defendants' Exhibit No. 49.

732

39013—41

W. F.
2—208

Address Only
The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

January 12, 1917.

In the Matter of the Interference of

Kane	} Before the Examiner of Interferences. No. 39,013.
<i>vs.</i>	
Milton	

You are hereby informed that the testimony, and exhibits,
**(and printed record)* in behalf of John L. Milton have been
received and filed.

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

John L. Milton, c/o
Lynn A. Williams,
Monadnock Block,
Chicago, Ill.

39013—140

6—1962

(Endorsed) Nov 7 1918

* * * * *

*Matter in italics in parentheses, stricken out in original transcript.

740

39,013—43

W. F.
2—208

Address Only
The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

January 26, 1917.

In the Matter of the Interference of

Kane }
vs. } Before the Examiner
Milton } of Interferences.
 } No. 39,013.

.....
You are hereby informed that the * (*testimony, exhibits and*)
printed record in behalf of John L. Milton have been received
and filed.

Very respectfully,

W. F. WOOLARD,
Chief Clerk.

John L. Milton, c/o
Lynn A. Williams,
Monadnock Block,
Chicago, Ill.

39013—141

6—1962

(Endorsed) Nov 7 1918

*Matter in italics in parentheses, stricken out in original transcript.

Final Hearing
February 16, 1917.

IN THE UNITED STATES PATENT OFFICE.

Kane v. Milton.

Patent Interference No. 39,013.

Magneto Generator.

Application of Edmund Joseph Kane filed January 14, 1915, No. 2097, division of No. 541,438, filed February 2, 1910. Patent of John Lewis Milton, No. 1,096,048, issued May 12, 1914, application filed October 28, 1910, No. 589,564.

Messrs. Williams & Bradbury for Kane.
Mr. Lynn A. Williams for Milton.

This interference involves an application of Edmund Joseph Kane, filed January 14, 1915, as a division of an earlier case, No. 541,428, filed February 2, 1910, and the patent of John Lewis Milton, No. 1,096,048, dated May 12, 1914, granted on an application filed October 28, 1910.

On motion, the burden of proof was shifted to Kane on the ground that Milton might avail himself, under section 4887, R. S., of his British filing dated of October 28, 1909.

On April 18, 1916, times for taking testimony and for final hearing were set. No testimony was taken by either party, and on September 6, 1916, judgment on the record was entered for the senior party Milton. On September 28, 1916, counsel 39013—142

(Endorsed) Nov 7 1918

for the parties Milton and Kane stipulated that the judgment of priority rendered in favor of Milton be vacated, and that times be set for taking testimony. This stipulation was approved and times set for the taking of testimony.

The invention relates to a magneto generator for an internal combustion engine.

The Counts are as follows:

1. In combination, a field magnet, an inductor mounted upon a shaft for oscillation relative to the field magnet, a yoke mounted upon the shaft for oscillation with the inductor, an operating arm carried by the yoke, a reciprocating member driven by an internal combustion engine to engage the operating arm to swing the yoke in one direction, means for disengaging the reciprocating member from the operating arm to permit the oscillating parts to return to their normal position, spring mechanism connected with the diametrically opposite arms of the yoke, to return it to the normal position when relieved of the pressure of the reciprocating member, a curved cam surface on one arm of the yoke, a fixed electrical contact and a swinging electrical contact in the combustion chamber of the internal combustion engine, a spindle upon which the swing contact is mounted, a push finger mounted upon the contact and spindle and carrying an anvil normally disengaged from the cam surface of the yoke but adapted to be engaged by the cam surface upon the overthrow of the oscillating yoke to separate the electrical contacts, and a light spring acting to bring the swinging contact and the push finger into their normal positions.

2. In a device of the class described, a suitable field magnet, an indicator adapted for oscillating with respect to the field magnet, a yoke rigidly connected with the inductor and having projections at diametrically opposite points, main actuating springs connecting the projections of the yoke with suitable stationary projections on the frame, the said actuating springs tending always to return the oscillating members to their normal positions, a pair of electrical contacts in the combustion chamber of an internal combustion engine, a light spring tending to maintain the closure of said electrical contacts, a push finger adapted when struck to separate the electrical contacts against the tension of the light

39013—143

(Endorsed) Nov 7 1918

743

3. spring, a curved cam surface on the yoke adapted to engage the push finger upon the overthrow of the yoke when returned to its normal position by the main actuating springs, an operating arm associated with the yoke,

and reciprocating mechanism driven by the internal combustion engine to engage the operating arm to swing the yoke and the inductor out of their normal position.

3. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation within the field magnet, a pair of main actuating springs, each connected at one end with the field magnet frame, an integral yoke member rigidly connected with the inductor, the main actuating springs being connected at their free ends with the said yoke member, an operating arm constituting a part of the integral yoke member and adapted to be engaged by a reciprocating member driven by an internal combustion engine, separable contact points within the combustion chamber of the internal combustion engine, a light spring tending to maintain the closure of the electrical contacts, and mechanism adapted to be engaged by a cam surface on the yoke member to cause the separation of said contacts in opposition to the tension of the said light spring.

4. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation therein, spring mechanism tending to return the inductor to its normal position when moved out of said normal position, an operating arm for turning the inductor out of its normal position, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod being adapted normally to engage the end of the inductor-operating arm, means for shifting the path of travel of the reciprocating rod to determine its engagement with the operating arm, generating windings supported by the field magnet, separable electrical contacts in the combustion chamber of the engine, and a member fixed relative to the inductor adapted to effect the operation of said contacts to create an ignition spark within the combustion chamber of the engine.

5. In a device of the class described, a field magnet, an inductor mounted for oscillation therein, an operating arm for said inductor, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod adapted normally to engage the end of the inductor-operating arm, generating windings supported by the field magnet, separable electrical contacts in the combustion chamber of the en-

ging, and an impact member fixed relatively to the inductor adapted to separate said contacts to create a spark in the combustion chamber.

39013—144

(Endorsed) Nov 7 1918

744

4.

6. In a device of the class described, a field magnet, a shaft, an inductor mounted upon the shaft for oscillation relative to the field magnet, a yoke mounted upon shaft for oscillation with said inductor, springs tending to retain the inductor and shaft in normal position, an engine-driven member for oscillating said shaft and parts carried thereby, separable electrical contacts within the combustion cylinder of the engine, and an impact member fixed relative to the inductor and shaft arranged to effect the separation of said contacts to create an ignition spark in the combustion chamber of the engine.

The invention is an improvement in magnetos. This old magneto had been mounted on a base at the side of the engine cylinder and was connected up with the igniter by means of a rod. By this arrangement proper adjustment between the magneto and the igniter was difficult to maintain. The improvement consisted in making the plug for the igniter and the bracket for the magneto in one integral piece, so that the plug and magneto could be removed and replaced together.

While Milton has been given the benefit of the British filing date, he has himself testified to work upon the invention prior to that date. But he is in no way corroborated and his own unsupported testimony cannot avail him. He is therefore limited for conception and constructive reduction to practice to his British filing date, October 28, 1909.

Kane's testimony is to the effect that he made drawings of the invention on April 11, 1909, which he showed to others on April 14, 1909. In this he is fully corroborated. The invention was reduced to practice within a few days thereafter.

Mr. Chiville, a draftsman, testified that he and Kane were

39013—145

(Endorsed) Nov 7 1918

745

5.

independently put to work in the spring of 1909, to improve the mounting or arrangement of the magneto. He says that Kane submitted the design shown in his applica-

tion a few days later. One of the structures was made immediately and demonstrated the practicability of the device. This entitled Kane to reduction to practice in the spring of 1909, long prior to any date that can be accorded Milton.

All of the witnesses were examined to a greater or less extent on the relations existing between Milton and Kane, apparently with a view to finding out whether Kane could have derived the invention from Milton. None of the witnesses give evidence which throws doubt on the question of Kane's independent inventorship. Milton claims to have made sketches and drawings some time before Kane's date of conception. He does not assert, however, that he ever disclosed the same to Kane. On the other hand, Kane positively denies any knowledge of Milton's alleged earlier work. Kane must therefore be regarded as an original and prior inventor.

Priority of invention of the subject-matter in issue is accordingly awarded to Edmund Joseph Kane, the junior party.

Limit of appeal: April 19, 1917.

H. E. STAUFFER

Examiner of Interferences.

March 30, 1917.

39013—146

(Endorsed) Nov 7 1918

746

2-224

Room No. 261.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 45.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

JHD

March 30, 1917.

(Rubber stamp) U. S. Patent Office, Interference Division
Mar 30 1917 Mailed

In Re Interference No. 39013.

Kane

v.

Milton.

} Before the Examiner of
Interferences.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

6-1652

THOMAS EWING
Commissioner of Patents.

Enclosed please find copy of the decision rendered this day in the above noted case.

H. T. STAUFFER
Examiner of Interferences.

39013-147

(Endorsed) Nov 7 1918

484

Defendants' Exhibit No. 49.

747

2-603

Address Only
The Commissioner of Patents
Washington, D. C.

Letter No.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

May 17, 1917.

In the matter of the
Interference of
Milton

vs.

Kane,

Intf. No. 39,013.

Sirs:

You are hereby notified to withdraw the exhibits and extra copies of the printed record filed by you in the above entitled case, within ten days from the date hereof, or they will be otherwise disposed of.

Very respectfully,

Chief Clerk.
F.

John Lewis Milton,
c/o Lynn A. Williams,
Monadnock Block,
Chicago, Ill.

39013-148

(Endorsed) Nov 7 1918

748

39013—47.

Harrison { 3634
 { 3638

Williams
ord C. Bradbury
rt M. See
bert G. McCaleb
bert F. Bracke

Williams, Bradbury & See
Attorneys and Counselors
in
Patent and Trade Mark Causes
1315 Monadnock Block
Chicago

May 31, 1917.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

Please permit Mr. Norman T. Whitaker, of Legal Building, Washington, to withdraw from the file of interference No. 39,013, Milton vs. Kane, the exhibits and extra copies of the printed record filed by both parties.

Respectfully,

LYNN A. WILLIAMS
Attorney for Milton.
WILLIAMS & BRADBURY
Attorneys for Kane.

Received the above printed record and exhibits for both parties.

NORMAN T. WHITAKER
Per W. C. MILES

May 24, 1917

39013—149

(Endorsed) Nov 7 1918

IN THE UNITED STATES PATENT OFFICE.

Kane v. Milton.

Patent Interference No. 39,013.

Order.

Magneto Generator.

Application of Edmund Joseph Kane filed Jan. 14, 1915, No. 2,097, division of No. 541,428 filed Feb. 2, 1910.
Patent granted John Lewis Milton May 12, 1914, No. 1,096,048, on application filed Oct. 28, 1910. No. 589,564.

Messrs. Williams & Bradbury for Kane.
Mr. Lynn A. Williams for Milton.

Interference No. 39,013, Kane v. Milton having come to my attention in connection with interference No. 39,181, Podlesak v. Kane, the fact is developed that when the testimony was taken both the Kane application and the Milton patent were owned by the Western Electric Company and that company therefore had it within its power to control the evidence introduced. The decision against Milton is rested on the ground of lack of corroboration of his own testimony.

Under the circumstances the office should not have attempted to make a decision on the question of priority. The assignee should be required to elect as between the two inventors.

In view of the above, and acting under my supervisory authority, the judgment of the examiner of interferences dated March 30, 1917, in favor of Kane, is hereby vacated and set aside, and the interference is hereby dissolved.

THOMAS EWING
Commissioner.

July 19, 1917.
39013—150

(Endorsed) Nov 7 1918

750

2—603

Address Only
The Commissioner of Patents
Washington, D. C.

Letter No. 49.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

July 19, 1917.

In the matter of the
Interference of
Kane
v.
Milton
Intf. No. 39,013. }

Sir:

Please find enclosed herewith a copy of an order of the
Commissioner, dated July 19, 1917, in the above entitled case.
By direction of the Commissioner:

Very respectfully,

W. F. WOOLARD
Chief Clerk.

E. J. Kane,
c/o Williams & Bradbury
720 Monadnock Block
Chicago, Ill.

J.

John L. Milton
c/o Lynn A. Williams
Monadnock Block
Chicago, Ill.

39013—151

(Endorsed) Nov 7 1918

Filed Aug. 10/17
(Rubber stamp) Docket Clerk Aug. 15 1917 U. S. Patent
Office

UNITED STATES PATENT OFFICE

Kane
vs.
Milton } Interference No. 39,013.

Petition to the Commissioner of Patents to Vacate Order of
July 19, 1917.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

Now come Edmund Joseph Kane and Webster Electric Company, his assignee, by Williams & Bradbury, his and their attorneys, and petition the Commissioner of Patents to withdraw his order dated July 19, 1917, in the above entitled interference.

Your petitioners respectfully show that now and at the time of the decision and judgment of priority by the Examiner of Interferences, dated March 30, 1917, the Webster Electric Company is not and was not the assignee of John Lewis Milton, one of the parties to the above entitled interference.

Your petitioners show on the contrary that now and at the time of the said decision of the Examiner of Interferences, and at the time the testimony was taken on behalf of Kane and on behalf of Milton the whole right, title, and interest in and to the Milton patent involved in the above entitled interference is and was vested in Lynn A. Williams, Trustee.

39013—152

(Endorsed) Nov 7 1918

752 Your petitioners respectfully show that they do not own nor control the Milton patent aforesaid, and are not in a position to execute or file either a disclaimer in the matter of the said Milton patent nor a concession of priority by or for Milton and in favor of Kane.

Your petitioners respectfully show that in the taking of testimony in the above entitled interference a bona fide effort was made to ascertain all of the facts and to secure the testimony of all of the witnesses having any knowledge of the facts tending to corroborate both Kane and Milton in their claims of inventorship.

Your petitioners show that John Lewis Milton has and throughout the conduct of the above entitled interference has had a direct financial and pecuniary interest in his patent.

Your petitioners respectfully show that they do not have and have not had the power or authority to elect as between Kane and Milton which should have the patent covering the subject matter in interference.

Your petitioners respectfully show that when the testimony was taken in the above entitled interference neither the Webster Electric Company nor any other one party had it within its power to control the evidence introduced.

The assignment records of the Patent Office show and have shown throughout the conduct of the above entitled interference who the owners of the Kane application and the Milton patent have been, and the assignment records show that when the interference was declared the Kane application was owned by Edmund Joseph Kane himself and 39013—153

—2—

(Endorsed) Nov 7 1918

753 that it was assigned to the Webster Electric Company prior to the taking of testimony in the said interference. These assignment records show also that the Milton application theretofore owned by John Lewis Milton himself was assigned to Lynn A. Williams, Trustee, on April 10, 1912, and that the said assignment was recorded on December 13, 1915. Your petitioners show that no other assignments of the said Kane application or the said Milton patent have ever been executed or recorded and that the ownership of the said Kane application and the said Milton patent as it now exists is fully shown by the assignments of record in the Patent Office.

Under the facts and circumstances as above set forth, and as verified by the accompanying affidavit of Lynn A. Williams, it is respectfully requested that the Commissioner's Order of July 19, 1917, in the above entitled interference be vacated and withdrawn.

Respectfully,

EDMUND JOSEPH KANE, and

WEBSTER ELECTRIC COMPANY,

By WILLIAMS & BRADBURY,

His and Their Attorneys.

Chicago, Illinois,

August 13, 1917.

39013—154

—3—

(Endorsed) Nov 7 1918

754 (Rubber stamp) Docket Clerk Aug 15 1917 U. S. Patent Office

UNITED STATES PATENT OFFICE

Kane }
vs. } Interference No. 39,013.
 Milton }

AFFIDAVIT OF LYNN A. WILLIAMS

County of Cook, }
 State of Illinois. } ss.

LYNN A. WILLIAMS, being first duly sworn on oath deposes and says:

I am an attorney at law and a member of the firm of Williams, Bradbury & See, whose practice is confined to patent, trade-mark and copyright causes. Prior to the formation of the partnership of Williams, Bradbury & See, I was a member of the partnership of Williams & Bradbury, the attorneys of record for Kane in the above entitled interference. I personally am the attorney of record for John L. Milton, one of the parties to the above entitled interference.

My present firm and its predecessors, and I individually, or the firms of which I have been a member, have been the attorneys for the Webster Electric Company in patent matters for a period of some ten years. I personally am familiar with the affairs of the Webster Electric Company insofar as they relate to patent matters.

During a period of several years commencing in 1906, John L. Milton, one of the parties to the above entitled interference, invented certain improvements relating to electric generators and magneto ignition equipment, upon which inventions 39013—165

(Endorsed) Nov 7 1918

755 tions he applied for Letters Patent of the United States. Mr. Milton entered into various license contracts and agreements with the Webster Electric Company and its predecessor, the Webster Manufacturing Company, in accordance with which agreements the Webster Electric Company was licensed to make, use and sell Mr. Milton's said inventions, and in accordance with the said contracts the Webster Electric Company agreed to pay Milton certain royalties.

Certain disputes and controversies arose between the said John L. Milton and the said Webster Electric Company, and certain litigations were commenced. In April, 1912, all of these matters in controversy were amicably settled under an agreement under which the Webster Electric Company undertook to pay Milton the sum of Twenty-five Thousand (\$25,000.00) Dollars, partly in cash, partly in notes secured by a chattel mortgage upon certain machinery owned by the Webster Electric Company, and partly in a series of seventy-five (75) notes for Two Hundred Dollars (\$200.00) each, one note being payable each month, beginning on May 1, 1913, and continuing for a period of seventy-five months thereafter.

In according with this settlement agreement, which was entered into on April 10, 1912, Milton executed a blank assignment of his several patents and patent applications, including the one involved in the above entitled interference, and this assignment was deposited with me as escrow, to be held pending the payment of all of the said seventy-five notes, this assignment to be filled in with the name of the Webster Electric Company upon proof to me of the completion of the payment of all of said notes.

On the 11th of December, 1915, a further agreement was entered into between Webster Electric Company and John 39013—156

—2—

(Endorsed) Nov 7 1918

756 L. Milton, whereby I was authorized to fill into the blank assignment the name of Lynn A. Williams, Trustee, as assignee, and to record the said assignment, and thereafter to hold title to the said Milton patents and pending applications until such time as the Webster Electric Company might complete the payment of all of the said seventy-five notes, whereupon I was authorized to execute an assignment of said patents and applications in favor of the Webster Electric Company. This trust agreement provided, also, that in the event of the failure of the Webster Electric Company to complete the said payments, I should, upon notice, offer the said patents and applications for sale to the highest bidder, and should apply the proceeds in payment to Milton of the unpaid balance of Twenty-five thousand dollars.

Coincident with the execution of the said trust agreement, the aforesaid blank assignment was filled in with the name Lynn A. Williams, Trustee, and the said assignment was recorded in the United States Patent Office under date of December 13, 1915.

The Webster Electric Company has not as yet completed payment of all of the said notes to Milton, and I therefore continue to hold title to the said Milton patents and applications, including the Milton patent involved in the above entitled interference. Under the terms of the trust agreement, I am bound to continue to hold such title and do still hold it. The last of the aforesaid notes does not mature until July, 1919, and unless there is some advance payment of the unmatured notes, or unless there is some default in the payment of such notes as do mature, I shall continue to hold title to the Milton patent involved in the above entitled interference until some time in 1919.

39013—157

—3—

(Endorsed) Nov 7 1918

757 While, therefore, the Webster Electric Company is in the process of acquiring title to the Milton patent involved in the said interference, the Webster Electric Company has not as yet acquired such title. Meanwhile John L. Milton has a beneficial interest in the said patent. I certainly would be liable for breach of trust if, prior to the completion of the payment of said sum of Twenty-five Thousand Dollars I should execute an assignment of the Milton patent in favor of the Webster Electric Company or any other party.

Shortly after the above entitled interference was declared, I advised Mr. Milton of the fact, and spent parts of several days with him in going through his records and papers, in an effort to locate any and all documentary evidence which would aid Mr. Milton in fixing his date of invention, or which would serve as evidence in establishing his date of invention. This was prior to the execution of Milton's preliminary statement.

At the same time I ascertained from Mr. Milton the names and addresses of the witnesses upon whom he would rely to corroborate his testimony as to his date of invention.

Shortly afterward I interviewed all of the respective witnesses named by Mr. Milton. I found that some of them had little knowledge of the facts, and that the facts known to others of these witnesses indicated that Kane, rather than Milton, was the inventor of the subject matter in controversy. After I had thus satisfied myself that Kane was probably the prior inventor, I so advised Mr. Milton and the Webster Electric Company.

The Webster Electric Company thereupon entered

into negotiations with Kane, as a result of which the Web-
39013—158 —4—

(Endorsed) Nov 7 1918

758 ster Electric Company acquired the whole right, title and
interest in and to the Kane application involved in the
said interference.

In connection with these negotiations Kane showed to me
the documentary evidence upon which he relied to establish
his date of invention, and gave me the names and addresses
of the witnesses upon whom he would rely. These witnesses
were in large part the same witnesses upon whom Milton had
proposed to rely in establishing his date of invention.

Shortly thereafter I interviewed all of the additional wit-
nesses named by Kane, and reached the conclusion that Kane
could undoubtedly establish priority of invention as against
Milton.

Thereupon I interviewed Mr. Milton and presented to him
the facts upon which I based my conclusion that Kane could
establish priority of invention as against Milton. I suggested
to Milton that under the circumstances he execute a conces-
sion of priority in favor of Kane, but this he declined to do
for the reason that he still claimed to be the original and first
inventor, and he expressed his unwillingness to say or do any-
thing which could be taken as indicating or implying that he
did not regard himself as the original and first inventor. He
said, among other things, that he would not put himself in the
position of taking payment from the Webster Electric Com-
pany for his applications or patents, and at the same time
conceding that some other party was the inventor of the sub-
39013—159 —5—

(Endorsed) Nov 7 1918

759 ject matter which he had undertaken to sell to the Web-
ster Electric Company.

It was thereupon arranged between Milton and the Webster
Electric Company and Kane that both Kane and Milton should
give their testimony as to the making of the invention in issue,
and that all of the witnesses having knowledge of any of the
facts relating to the making of the invention either by Kane
or by Milton should be called upon to testify as to all of the
facts within their knowledge, and all parties were satisfied to
have me or the members or employees of my firm arrange for

the introduction of this testimony to the end that all of the testimony and evidence relating to the making of the invention by either party in interference should be put before the Patent Office in order that a decision upon the question of priority might be made by an impartial tribunal, and in a case in which the Webster Electric Company was interested on behalf of Kane and in which Milton was interested in his own behalf, subject only to the right of the Webster Electric Company ultimately to acquire the Milton patent, and in the event that it should complete the payment of Twenty-five Thousand Dollars, as above set forth.

There was not the slightest collusion between any of the parties, and there was no effort by any party to conceal any evidence or to modify any evidence which would in any way tend to prevent a correct determination as to which of the two parties was the prior inventor of the subject matter in had an opportunity to examine and to rebut any and all of the evidence thus taken.

39013—160

—6—

(Endorsed) Nov 7 1918

760 issue. All parties interested had the fullest opportunity to produce all of the available evidence, and all parties

When the testimony had been completed it was printed and filed in the usual manner. No brief was submitted on behalf of either party. The Examiner of Interferences was thus enabled to decide the question of priority upon the evidence without any advocacy of the contentions of either party as against the other.

The contest upon the question of priority was a genuine and bona fide contest in which neither the Webster Electric Company nor any other single interest controlled or sought to control the production of evidence or the nonproduction of evidence.

Throughout the interference and up to the present time John L. Milton had an interest in his patent, which was and still is adverse to the interest of the Webster Electric Company in the Kane application in interference.

39013—161

—7—

(Endorsed) Nov 7 1918

761 I am making this affidavit in support of the Petition of Kane and Webster Electric Company to vacate the order

of the Commissioner of Patents dated July 19, 1917 in the above entitled interference.

LYNN A. WILLIAMS

Subscribed and sworn to before me this 13th day of August, 1917.

MARY A. COOK

Notary Public.

39013—162

(Endorsed) Nov 7 1918

762 Recorded Vol. 123, Page 438.

39,013.

51

J. R. S.

IN THE UNITED STATES PATENT OFFICE.

Kane *vs.* Milton.

Patent Interference No. 39,013.

Petition.

Magneto Generator.

Application of Edmund Joseph Kane filed January 14, 1915, No. 2,097, division of application No. 541,428, filed Feb. 2, 1910.

Patent granted John Lewis Milton May 12, 1914, No. 1,096,048, on application filed October 28, 1910, No. 589,564.

Messrs. Williams & Bradbury for Kane.

Mr. Lynn A. Williams for Milton.

On July 19, 1917, the Commissioner entered an order directing that the judgment of the examiner of interferences, dated March 30, 1917, in favor of Kane, be vacated and set aside and the interference be dissolved. This order was based on the ground that it had developed when the testimony was taken that both the Kane application and the Milton application were owned by the Webster Electric Company; that that company had, therefore, the power to control the evidence; and that it should be required to elect as between the two inventors.

The present petition asks that the order be set aside on the

ground that it was entered under a misapprehension as to the facts. In the affidavit accompanying the petition the attorney who appears on the record as counsel for Milton 39013—163

(Endorsed) Nov 7 1918

763 and who is a member of the firm of attorneys representing Kane, states that he is the attorney for the Webster Electric Company, that the Milton patent was assigned to him as a trustee for a specific purpose, namely, to hold until certain promissory notes given by the Webster Electric Company to Milton in payment for certain patents and applications, including the application on which the patent involved in the interference was granted, had been paid, the last of these notes not becoming due until sometime in 1919, and should there be a default in the payment of these notes, after due notice to sell the patents and apply the proceeds to paying the unpaid balance to Milton. The assignment, which is to Lynn A. Williams, Trustee, does not state what the terms of the trust are, but the terms are set out in the affidavit and copies of the agreement referred to therein were submitted to me for inspection.

It is further stated in the affidavit that after the witnesses had been interviewed Milton was notified that in the opinion of the attorney Kane was the first inventor and that Milton declined to file a concession of priority but that he knew of all the proceedings and that there was no attempt to conceal any evidence which would have any bearing on the question of priority. It appearing, therefore, that the statement of the Commissioner, that both the application and the patent were owned by the same assignee, was made under a misapprehension and that neither the trustee nor the Webster Electric Company had the power to elect between the parties to the interference, the order will be vacated.

It was stated to me that the attorney had interviewed the Commissioner and was informed by him that upon the present 39013—164

—2—

(Endorsed) Nov 7 1918

764 tation of the facts in the form of an affidavit the order would be vacated. The petition was brought to Washington on August 15, 1915, by a representative of the attorney, who arrived, however, after the Commissioner, who had resigned, had left the city.

It is directed that the order of July 19, 1917, be vacated and the interference is restored to the condition that it was prior to the entry of that order.

R. F. WHITEHEAD
Acting Commissioner.

August 17, 1917.

39013—165

(Endorsed) Nov 7 1918

765

52

Address Only
The Commissioner of Patents
Washington, D. C.

ESH

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C.

August 21st, 1917.

In the matter of the
Interference of
Kane vs. Milton
No. 39,013

} Petition by Kane.

Sir:—

Please find enclosed herewith a copy of a decision of the Acting Commissioner dated Aug. 17, 1917, in the above entitled case.

Very respectfully,

W. F. WOOLARD
Chief Clerk.
F.

Edmund Joseph Kane,
c-o Williams & Bradbury,
Monadnock Block,
Chicago, Ill.

John Lewis Milton,
c-o Lynn A. Williams
Monadnock Block,
Chicago, Ill.

39013—166

(Endorsed) Nov 7 1918

(2)
2—210.

Milton vs. Kane.

- | | | | |
|-----|----------------|---|----------------------------|
| | | | [Sheet] |
| 1. | Aug. 24, 1915. | Declaration. | Statements due Sept. 27/15 |
| 2. | Sept 13/15. | " of intf. to patentee returned by | |
| | | P. O. | |
| 3. | " 14 " | Address of Milton due | Sept. 29/15. |
| 4. | " 3 " | Stipulation to extend time for Stmt | |
| 5. | Sept. 17/15. | Statements due | Oct. 7/15. |
| 6. | Oct. 1, 1915. | Letter re address of Milton | |
| 7. | " 2/15 | Notice of declaration remailed to pat- | entee |
| 8. | " 6 " | Statement of Kane | |
| 9. | " 7 " | Letter to | " |
| 10. | " 7 " | Stipulation to extend time for State- | ments. |
| 11. | " 7/15 | Registry return receipt | |
| 12. | " 11 " | Statements due | Oct. 18/15 |
| 13. | " 18 " | Stipulation to extend time for Stmts | |
| 14. | " " " | Statements due | Nov 8/15 |
| 15. | Nov. 1/15 | Pet. by Kane to extend time for Stmts | |
| 16. | Nov. 3/15 | Pet by Kane granted. Statements due | Nov 29/15 |
| 17. | " 8 " | Statement of Milton | |
| 18. | " " " | Letter to | " |
| 19. | " 30 " | Stipulation to extend time for filing | statements |
| 20. | Dec. 2/15 | Receipt of stip acknowledged Call up | with 39,181. |
| 21. | Dec. 17 " | Testimony set. | F. ld. July 5/16 |
| 22. | Jan. 8-16 | Authority to inspect & obtain copies. | |
| 23. | Feb. 14/16 | Brief for Kane (2 Copies) | |
| 24. | " 15 " | Motion to Shift Proof by Milton | |
| 25. | " " " | Brief for Milton | |
| 26. | Feby 18/16 | Motion to shift proof granted. Testy | reset |
| 27. | Apr. 17/16 | Stipulation to Extend time for testy. | Filing Aug. 3/16. |
| 28. | " 18/16 | Times extended. | F. H. Sept. 5/16. |
| 29. | Sept. 6/16 | Decided favor Milton, L. A. Sept. 26/10 | |
| 30. | " 25 " | Stipulation to extend L. A. | |

39013—168

(Endorsed) Nov 7 1918

767

2—210.

Kane vs. Milton.

[Sheet]

- | | | | |
|-----|-------|-------|--|
| 31. | Sept. | 27/16 | L. A. from dec'n Sept 6/16 extended to Oct 2/16 |
| 32. | " | 28 " | Stipulation to vacate & set time for testy |
| 33. | " | 29 " | Judg't of Sept 6/16 vacated. Testy re-set F. H. Feb. 16/17. |
| 34. | Dec. | 20/16 | Testimony & Exhibit for Kane (in box) |
| 35. | " | " " | Letter to " |
| 36. | " | 26 " | Testimony & Exhibits for Kane (in box and Section 28) |
| 37. | " | 27 " | Letter to Kane |
| 38. | Jany | 4/19 | Printed record for Kane (31 copies) |
| 39. | " | " " | Letter to " |
| 40. | " | 11 " | Testimony & Exhibit for Milton (in box) |
| 41. | " | 12 " | Letter to " |
| 42. | " | 25 " | Printed record for Milton (31 copies) |
| 43. | " | 26 " | Letter to " |
| 44. | March | 30/17 | Decided favor of Kane. L. A. April 19/17 |
| 45. | " | " " | Letter of transmittal |
| 46. | Apr. | 27/17 | Decision noted (See letter) |
| 47. | May | 24/17 | Records & Exhibits for Milton and Kane returned to W. T. Whitaker. |
| 48. | July | 19 " | Commr's Order (decision of Mar. 30/17 vacated & intf. dissolved) |
| 49. | " | " " | Notice of Order |
| 50. | Aug. | 15 " | Petition by Kane that Order of July 19/17 be vacated |
| 51. | " | 17 " | Commr's decision granting petition |
| 52. | " | 17 " | Notice of decision. |
| 53. | | | |
| 54. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 0. | | | |

(Written across face): Dissolution noted by Examiner of Interference Aug. 8, 17.

39013—167

(Endorsed) Nov 7 1918

500

Defendants' Exhibit No. 54.

768

2—431

191

Attorneys.

Edmund Joseph Kane,

**(c/o Brown , Nissen & Sprinkle,
312 S. Dearborn St.,
Chicago, Ill.)*

c/o Williams & Bradbury
720 Monadnock Block
Chicago, Illinois

John Lewis Milton

c/o Lynn A. Williams,
Monadnock Block,
Chicago, Ill.

(Endorsed) Nov 7 1918 1282 11/18

770

DEFT'S EX. 54.

2—390.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a photographic copy from the Records of this Office of the File Wrapper and Contents, in the matter of the Letters Patent of Edmund Joseph Kane, Assignor to Webster Electric Company, Number 1,204,573, Granted November 14, 1916, for Improvement in Electric Igniters for Explosive-Engines.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 29th day of January, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

F W CLAY

(Seal)

Acting Commissioner of Patents.

**Matter in italics in parentheses, stricken out in original transcript.*

771

1910

Div. 28

(Ex'r's Book 137—16

Number (Series of 1900),

541,428

Patent No. 1204573

Name Edmund Joseph Kane.

Assor. to Webster Electric Company, of Racine, Wis.,
a corp of West Virginia

of Chicago.

County of

State of Illinois.

Invention Electric Igniters for Explosive Engines.

Parts of Application Filed.

Original

Renewed

Petition	February 2, 1910	, 191
Affidavit	" " 1910	, 191
Specification	" " 1910	, 191
Drawing 2 sheets	" " 1910	, 191
Model or Specimen	, 191	, 191
First Fee 1 Cash \$15	Feb 2, 1910	, 191
" " Cert	, 191	, 191
Appl. filed complete	Feb 2, 1910	, 191

Examined A R Benson

Oct 31 16

Allowed

For Commissioner.

For Commissioner

Notice of Allowance

Oct. 4, 1916

, 191

4 Final Fee Cash \$20

Oct. 16, 1916

, 191

✓ " " Cert

, 191

, 191

Patented

Nov 14 1916

Nissen & Sprinkle

Associate Attorney

Attorney * (*Brown, ^ and Hopkins.*)

Williams & Bradbury # 1124 Monadnock Block)

1315 * (720) Monadnock Block Chicago, Ill.,

No. of Claims Allowed 5) Title as Allowed Electric Igniter* (s)

for 3 explosive engines

Class 123-152

6—1618

(In left-hand margin) Division of App., No. _____,
filed _____, 191_____

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

772 Frank T. Brown.
Francis A. Hopkins.

Law Offices of
Brown and Hopkins
Patent and Trade Mark Law a specialty.
1123 to 1126 Monadnock Building.
260 Dearborn Street.

Telephone
Harrison 292.
Cable Address
"Brohop."

(Rubber stamp) No. 15 Received Feb 2 1910 Chief Clerk
U. S. Patent Office

Chicago, Jan. 31, 1910.

Hon. Commissioner of Patents,
Washington, D. C.

CHS

Sir:

Enclosed find papers and drawings for application for patent in the name of Edmund Joseph Kane on Improvements in Electric Igniters for Explosive Engines, with our check for \$15. in payment of the first Government fee thereon.

Very respectfully,

BROWN & HOPKINS.

541428

1 Enclo.

(Endorsed) Jan 29 1919

773 573

3028

541,428

(Rubber stamp) Mail Room Feb 2 1910 U. S. Patent Office

PETITION

To the Commissioner of Patents:

The petition of Edmund Joseph Kane a citizen of the United States, residing at Chicago in the County of Cook State of Illinois and whose Post Office address is 123 N. Waller Ave. Chicago, Ill. prays that Letters Patent may be granted to him for the improvement in Electric Igniters for Explosive Engines as set forth in the annexed specification.

And he hereby appoints the firm of Brown & Hopkins, (composed of Frank T. Brown and Francis A. Hopkins, of 1124 Monadnock Block, 260 Dearborn Street, Chicago, State of Illinois, his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the Pat-

ent, and to transact all business in the Patent Office connected therewith.

Signed at Chicago in the County of Cook and State of Illinois this 22nd day of January 1910.

541428

2

(1) Inventor's signature EDMUND JOSEPH KANE

Inventor must sign papers in three places.

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

774

3029

SPECIFICATION

To All Whom It May Concern:

Be it known that I, Edmund Joseph Kane, a citizen of the United States, residing at Chicago, in the County of Cook, and State of Illinois, have invented certain new and useful improvements in Electric Igniters for Explosive Engines, of which the following is a full, clear, and exact specification.

The invention relates to improvements in electric-igniters for explosive engines.

The object of the invention is to provide an electric

pr √ E ignit^e*(o)r mechanism with novel and improved means for producing the spark for firing the charge.

A further object of the invention is to provide in a device of the character described improved means by which when the exhaust valve is held open during the operation of the engine by the speed governor mechanism and no charge in the cylinder is to be exploded, the igniter mechanism is the generator consisting of

pr A 14 rendered inoperative and consequently ^ the oscillating or rotating armature or inductor remains idle and a spark is not produced and as a consequence the resulting wear upon the moving parts

*Matter in Italics in parentheses, stricken out in original transcript.

and the loss of energy required to generate a use-
less spark is avoided.

A further object of the invention is to provide in
a device of the character described, direct and posi-
tively operating means for imparting movement to
, which preferably comprises the movable part of
the generator

“ “ the oscillating armature or inductor_Λ.

To the attainment of these ends and the accom-
plishment of certain other new and useful objects,
as hereinafter described, shown in the accompany-
ing drawings forming a part of the specification,
and finally pointed out more specifically in the ap-
pended claims, the invention is directed.

(In left-hand margin) 2:2:10

541428

3

1

9

(Endorsed) Jan 29 1919

775

3030

In the said drawings, (Fig.) 1 is a side eleva-
tion of an explosive engine with the invention at-
tached and having parts of the igniter mechanism
shown in section and other parts shown in broken
lines in order to more fully disclose the details of
construction of the igniter mechanism and one man-
ner of attaching the invention to an explosive en-
gine.

✓ Fig. 2 is a detail plan view of the igniter mech-
anism with the walls of the cylinder of the explo-
sive engine to which it is attached in section.

✓ Fig. 3 is an enlarged detail view of the igniter
parts similar to the view in Fig. 1, but showing in
dotted lines the relative movements of the exhaust
valve operating rod, and the igniter operating
or generator

pr A

means by which the igniter mechanism _Λ is ren-
dered inoperative and a spark not produced when
no charge is to be exploded in the cylinder because
through

“ “

of the action of the speed governor _Λ *(on) the ex-
on the generator

“ “

haust valve operating means_Λ. This view is taken
on line 3-3 of Fig. 2.

*Matter in italics in parentheses, stricken out in original transcript.

Similar characters of reference indicate similar parts throughout the several views. ¶ 1 is the engine cylinder, and 2 the main frame. ¶ 3 is the engine base. ¶ 4 is the fly-wheel on shaft 5 provided with a crank 6 operated by connecting rod 7 pivoted to the piston on the interior of the cylinder 1 in the usual or any desired manner. ¶ The engine cylinder 1 is provided with the usual side opening adapted to receive the usual igniter block 8 which is provided with an inner extension 9 fitted through the opening and extending into the cylinder 1. / In the horizontal opening through the block 8 extends a stationary electrode 10 which is preferably insulated from the igniter block 8 by suitable insulating material in the usual manner

541428

4

herein

and not / specifically shown, since it is the common

2

9

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

776

3031

practice to insulate the stationary electrode from the igniter block rather than the movable electrode. Outside the block 8 on the electrode 10 is provided means for the securement to the electrode 10 of the wire 11, such means preferably comprising a threaded outer end on the electrode 10 and the two threaded chamfered or polygonal nuts 12 and 13, between which one end of the wire 11 may be secured. ¶ Secured to the igniter block 8 and preferably cast integral therewith is an arm 14 extending for a short distance approximately parallel with the outer wall of the cylinder 1 and provided at its forward extremity with the angular bearing portion 15 into which the shaft 16, on which is carried the armature or inductor, is journaled. X The armature or inductor may be of any desired type as well as the construction of the field of the igniter but the preferred form is an armature or inductor of the form shown only in dotted lines as indicated by the reference character 17 in Fig. 1 of the drawings, which, although not specifically shown may

56

consist of masses of laminated iron suitably joined together and of approximately the form shown in dotted lines in Fig. 1 and being mounted to oscillate with shaft 16, will, in a well known manner, produce rapid periodic reversals in the magnetic polarity of the cores 18 and 19 indicated in broken lines on Fig. 1 and will in a well known manner set up alternate currents in the coils surrounding them. The wound cores 18, 19 may consist of projections from the laminated iron plates indicated at 20, 21, which at their upper and lower extremities are joined by the magnet plates 22, 23.

541428

5

3

9

(In left-hand margin) 2:2:10
(Endorsed) Jan 29 1919

777

3032

equally be applied to magnetos or generators for furnishing electrical ignition whether the armature or moving part is of the wound type instead of the laminated metal or whether the field be of the ordinary form of winding.

The laminated cores 18, 19, may be wound in the manner common to this type, | one end of the winding indicated by 24 being connected to the supporting block 25 in contact with sleeve 15 and secured thereto by set screw 25*, which completes the circuit to the bearing block 8 and the movable electrode 26*(,) which is also journaled in bearing block 8 and extends to the outside of the block, being provided at its outer extremity with the crank arm 27 and held normally in such position that the

*Matter in italics in parentheses, stricken out in original transcript.

electrodes 10 and 26 are normally in contact with each other by means of the torsion spring 28, one end of which is secured to the igniter block 8 and the other end in engagement with the crank arm 27. The wire 11 already referred to as in contact with electrode 10 leads directly to the wound core 19, thus completing the electrical circuit. To the supporting block 25 is secured the laminated field members 20, 21, which carry the wound cores 18, 19. The end of the crank arm 27 on the movable electrode 26 is provided with an adjustable screw 29 provided with a lock nut and having a head at its lower extremity for engagement with the oscillating member 30, which is secured to rotate with the oscillating shaft 16 carrying the armature or inductor 17. The oscillating member 30 secured to the armature shaft 16 is provided with horizontally extending arms, the extremities of which are in engagement each with one end of coil springs 31, 32, which have their outer extremities secured to brackets 33, 34, extending laterally from the laminated field members 20, 21. The springs 31, 32 normally exert a tension on the oscillating member 30, thus holding the armature or inductor 17 in its normal position and offering elastic resistance to the rotation of the inductor or armature, which in

541428
6

4
9

(In left-hand margin) 2:2:10
(Endorsed) Jan 29 1919

778

3033

order to rotate or oscillate must move with the oscillating member 30 through the medium of the armature shaft 16, to which both are secured. The oscillating member 30 is provided with a vertically extending projection or finger as indicated at 35 adapted for engagement by the reciprocating member 36 for the purpose of oscillating the armature or inductor 17 against the tension of springs 31, 32. The extension 15 carried on the igniter block 8 through the connecting portion 14 is provided with an extending branch as indicated at 37, the outer extremity of which carries a grooved roller or sheave 38, which serves as an anti-friction bearing

and support for the reciprocating member 36, the free end of which adjacent the grooved roller or sheave 38 is adapted normally to engage the finger 35 to oscillate the armature or inductor. Reciprocating movement is imparted to the member 36 preferably from the crank shaft 5 of the engine, and a convenient way of accomplishing this purpose is to secure / a gear as indicated at 40, which

is meshing with the gear 41, / of suitable size to impart the desired speed to the igniter whatever the character of the engine. ¶ In the present embodiment of the invention, as shown particularly in Fig. 1, the engine is of the single cylinder four-cycle type, the gears 40 and 41 being of proper proportions to impart the desired speed to the shaft 42 and gear 41 for operating the exhaust valve rod, as indicated at 43, which is accomplished by the eccentric

67 tion of the / cam 44 keyed on shaft 42 and bearing against the anti-friction roller 45 carried at the upper extremity of the pivotal support 46 of the exhaust valve operating rod 43. The igniter operating member 36 may be operated from the shaft cam 42, which also carries the eccentric / 44 in any desired manner, a convenient form being indicated in the drawings in Fig. 1 consisting of an eccentric secured to shaft 42 and carrying a strap 47 secured to the forward extremity of the igniter operating member 36.

541428 It is well known in this art that means such as just described may be used for operating the ex-

7

5

9

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

779

3034

haust valve operating rod and it is equally well known in explosive engines that centrifugal governors may be employed on moving parts of the engine in order to control the speed of the engine by preventing the closing of the exhaust valve

when the engine reaches or exceeds the given speed. In explosive engines of the type herein shown, the piston is employed as a pump for drawing the explosive material into the cylinder but when the exhaust valve of the engine is held open automatically the action of the piston within the cylinder in creating a vacuum will be to cause the air to rush into the cylinder when the exhaust valve is open, following the lines of least resistance, so that a charge will not be drawn into the cylinder when the exhaust valve is open and consequently there will be no explosion take place in the cylinder. Heretofore it has been the practice in the use of igniters to connect them up positively with the engine so that the igniter runs constantly with the engine and a spark is produced at each cycle of operation of the engine whether a charge of explosive has been drawn into the cylinder or not. If, therefore, the engine has reached or exceeded a given speed and the explosion has been cut out by reason of the action of the governor due to the excessive speed, no explosion can take place until the speed has been reduced to or below the given degree and yet the igniter mechanism must continue to operate and the spark is wasted together with the energy necessary to create it and the igniter mechanism has been subjected to the wear incident to such operation for no useful purpose. It is to obviate this condition of useless wear on the igniter mechanism that is one of the special purposes of this invention, as stated, and it is not important what specific means for governing the speed of the engine be employed but the common form of reciprocating exhaust valve operating rod has been shown as commonly operated on four-cycle engines and this is further shown under the control of an ordinary centrifugal governor com-

541428
8

6
9

(In left-hand margin) 2:2:10
(Endorsed) Jan 29 1919

780

3035

prising pivoted weighted members 50, 51, secured to the fly-wheel 4 or the crank shaft 5 of the en-

gine and normally held in a given position by suitable springs 52, 53, which may be adjustable in order to vary their tension in a well known manner not necessary to describe for the purposes of illustrating the present invention. These spring controlled pivoted members 50, 51, may be connected with a suitable member slidably mounted on crank shaft 5, which preferably has an exterior cone shape and against which bears one end of the latch 54 which is pivoted at 55 on the main frame of the engine and has one end, as indicated at 56, adapted to engage with a notched member 57 on the exhaust valve operating rod 43. The usual operation of this form of governor is that, with the springs 52, 53 adjusted to have a given tension when the speed of the crank 25 reaches or exceeds a given speed, the operation of the governor will cause the end 56 of the latch to be depressed so that it will engage the notched member 57 on the exhaust valve operating rod 43 and prevent the turn of this rod when released by cam 44 and in this manner hold open the exhaust valve preventing further explosions of the engine because preventing the drawing in of a charge until the speed of the crank shaft falls below the given speed when the spring controlled members 50, 51 on the governor will act to release the exhaust valve operating rod and permit the exhaust valve to close, which will then cause the action of the piston to draw in a charge of explosive for the use of the engine.

It is obvious that even though the reciprocating member 36 which is shown as constantly operating from the crank shaft of the engine shall operate the igniter mechanism, the spark produced will be wasted if the exhaust valve is not closed so that a charge of explosive is provided within the cylinder. It is found by experience that it is very desirable to avoid all the wear and tear possible on the igniter mechanism. In order therefore that

541428

9

Seal Required

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

781

3036

the igniter mechanism may be rendered inoperative and consequently no spark produced when there is no charge in the cylinder to be exploded by reason of the exhaust valve being automatically kept open due to the engine having passed a given speed and because of the governor control over the exhaust valve, I provide means for automatically stopping the operation of the igniter mechanism under the control of the exhaust valve operating means. In the present embodiment of the invention the exhaust valve being under the control of the exhaust valve operating rod 43 I secure to the rod 43, in any suitable manner, a support 60 carrying at its upper extremity a suitable anti-friction roller 61. In order that the igniter operating member 36 may be properly timed to release the spring controlled igniter mechanism, the rod 36 is provided with a wedge block 62 adjustably secured thereto by set screw 63. By this means the timing of the igniter mechanism is secured. Another wedge block similar to the block 62 but having its inclined face in the opposite direction is also adjustably secured on the igniter operating member 36, as indicated at 64, and this member is adjustably secured to the member 36 by set screw 65. The operation of the exhaust valve cut out in its relation to the igniter mechanism is best seen from an inspection of the parts depicting the exhaust valve operating rod 43 and the igniter operating member 36 at the extremes of their movements as indicated by the full and dotted lines representing as shown in Fig. 3.
those parts./

The operation of the mechanism or as much thereof as pertains to the features of novelty herein described and claimed is as follows: The operator, desiring to start the engine, may turn the same in the usual manner, thus drawing in the charge of explosive into the cylinder. The operation of starting the engine will also impart movement to the igniter Δ operating member 36 through

pr A

the gears 40 and 41, the shaft 42 and the eccentric secured thereto which operates the member 36. The

541428

10

8

9

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

782

3037

movement of the member 36 causes its extremity adjacent the igniter mechanism to engage the upwardly extending arm 35 near its upper extremity and thus rotate the member 30, the shaft 16 and of the generator

pr A the armature or inductor [^] carried thereon against the tension of springs 31, 32. This rotation or oscillation of the generator

pr A /, cillation of the inductor or armature [^] will cause a current to be generated which will pass through the electrodes 10 and 26 in the circuit already described. The adjustable wedge block 62 under control of set screw 63 on the igniter operating member 36 may be adjusted so that the forward end of the member 36 will become disengaged from the arm 35 on the oscillating member 30 at the time the current passing through the electrodes 10 and 26 is near its maximum strength. The sudden release of the oscillating member 30 being under the control of the springs 31, 32 will cause it to be returned to normal position, as shown in all of the figures, under considerable momentum which will of the generator

“ “ carry the inductor or armature [^], the shaft 16 and the oscillating member 30 beyond the normal position and will cause the extremity of the oscillating member 30 adjacent the crank arm 27 to strike the adjustable screw-threaded member 29. This will rotate the crank arm 27 against the action of spring 28 and will at the same time separate the movable electrode 26 from the stationary electrode 10. The current being at about its maximum strength, as stated, a spark will then pass between the electrodes 10 and 26.

60

The engine having reached or passed a given speed by reason of which the governor mechanism has locked the exhaust valve operating rod 43

against closing the exhaust valve, the support 60 on the exhaust valve operating rod 43 will be carried to the position indicated in dotted lines in Fig. 3 by which the anti-friction roller 61 carried thereby will pass under the adjustable wedge block 64 and operate the igniter operating member 36 to the position indicated in dotted lines also in Fig. 3. In this position it will be seen that although the

541428

11

9

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

783

3038

37

igniter operating member 36 continues to operate it will be held in a position where its operation will or generator

pr A 2

not affect the igniter mechanism \wedge which will remain inactive until the exhaust valve operating rod 43 is returned to normal.

By means of the mechanism as described, it will or generator

“ “

be seen that the igniter mechanism \wedge including the spring controlled oscillating member 30, the armature shaft 16 together with the armature 17 and the movable electrode will all be cut out and remain inactive at all times when the engine is running above normal speed and it is not desired to ignite a charge in the cylinder.

✓ It will also be seen that the arrangement of the parts as described for operating the oscillating or generator

“ “

ing form of igniter \wedge herein shown is exceedingly simple and direct and that by directly operating the oscillating means controlling the armature or inductor through the medium of the reciprocating member 36 I provide an exceedingly simple and durable mechanism that is certain in its operation and not liable to get out of order, and furthermore the movable parts of the igniter being rendered inactive at all times when the exhaust valve is open, there is no useless current generated in the igniter as is the case with the igniters positively operated from the crank shaft of the engine without means for cutting out the operation of the ig-

niter mechanism under the control of the exhaust valve operating means or the speed governor.

541428

12

10

Seal Required

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

784

3039

In order that the invention might be fully understood the details of the preferred embodiment thereof have been thus specifically described but it is not desired to be limited to the exact details of construction thereof, for it will be apparent that many modifications may be made by those skilled in the art without departing from the purpose and spirit of the invention, and what I claim is—

(Written across face) (5 Cls)

sub. D¹*(C¹) G¹

**(1. In an explosive engine, the combination with an electric circuit having included therein two electrodes, of means for holding the electrodes in*

pr A

a generator comprising contact with each other, a magnetic field \wedge an inductor or armature located in said field and included in said circuit, means for moving the armature or inductor in relation to the magnetic field, exhaust valve operating means under the control of the explosive engine, and means under the control of the exhaust valve operating means for rendering the inductor or armature inoperative.

2. In igniter mechanism for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each a generator comprising

“ “

other, \wedge a magnetic field, an oscillatory armature located in said field and included in said circuit, reciprocating means controlled by the running of the engine adapted to engage the oscillatory armature, an exhaust valve cut-out under the control of the engine, and means operated by the exhaust valve

“ “

generator control for rendering the \wedge oscillatory armature inoperative.

*Matter in italics in parentheses, stricken out in original transcript.

3. In igniters for explosive engines, the combination with an electric circuit / included therein two electrodes, of means for normally holding the electrodes in contact with each other, ^{having} a generator comprising a magnetic field, an oscillatory armature located in said field and included in said circuit, means controlled by the running of the engine for operating the said oscillatory armature inoperative. (In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

latory armature, and means controlled by the exhaust operating means for rendering the said oscillatory armature inoperative.

4. The combination in an explosive engine being provided with an exhaust valve controlled by the running of the engine, of igniter mechanism and means operated by the exhaust valve controlling means for rendering the igniter mechanism inoperative.

5. In an explosive engine, the combination with igniter mechanism, of means for operating the igniter mechanism by the running of the engine, an exhaust valve, means for operating the exhaust valve by the running of the engine, and means operated by the exhaust valve operating means for rendering the igniter operating means inoperative.

6. In explosive engines, the combination with electric igniter mechanism, of means for operating the igniter mechanism controlled by the running of the engine, an exhaust valve, means for operating the exhaust valve, means controlled by the running of the engine for operating the exhaust valve to cut out the explosions of the engine, and means operated by the exhaust valve controlling means for rendering the igniter mechanism inoperative.

an
47. In explosive engines, the combination with an

*Matter in Italics in parentheses, stricken out in original transcript.

generator
 “ “ igniter mechanism, of means controlled by the run-
 generator
 “ “ ning of the engine for operating the igniter mech-
 anism, an exhaust valve, means operated by the
 per C running of the engine for opening the exhaust
 valve, means for preventing the closing of the ex-
 haust valve when the engine reaches or passes be-
 yond a given speed, and means operated by the ex-
 haust valve controlling means for rendering the
 generator
 “ “ igniter operating means inoperative.
 5 8. In igniters for explosive engines, the com-
 bination with an electric circuit having included
 therein two electrodes, of means for normally hold-
 ing the electrodes in contact with each other, a mag-
 Seal Required

541428

14

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

786

3041

netic field, an oscillatory armature located in said field and included in said circuit, a reciprocating member controlled by the running of the engine for moving the oscillatory armature in one direction, means for moving the oscillatory armature in the opposite direction, means for separating the electrodes when the oscillatory armature is moved in said opposite direction, and means for timing the movement of said armature in said opposite direction.

6 9. In igniters for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a shaft carrying the said oscillatory armature, an oscillatory member secured to said shaft, a reciprocating member controlled by the running of the engine for moving the said oscillatory member in one direction, means for moving the oscillatory member in the opposite direction, means for separating the

*Matter in italics in parentheses, stricken out in original transcript.

electrodes when the oscillatory member is moved in said opposite direction, and means for timing the movement of said oscillatory member in said opposite direction.

7 10. *In igniters for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a shaft carrying said oscillatory armature, an oscillatory member secured to said shaft, a reciprocating member controlled by the running of the engine for moving said oscillatory member in one direction, and means for moving the said oscillatory member and the armature in the opposite direction, said means comprising, an elastic spring, and means for timing the movement of said oscillatory member and said armature in said opposite direction.*

Seal Required

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

541428

15

787

3042

8 11. *In igniters for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a shaft carrying said oscillatory armature, an oscillating member secured to said shaft, means controlled by the running of the engine for moving the said oscillatory member in one direction, said means comprising a reciprocating member adapted to engage said oscillatory member, and means for disengaging said reciprocating member from said oscillatory member.*

9 12. *In igniters for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a shaft carrying*

*Matter in italics in parentheses, stricken out in original transcript.

said oscillatory armature, an oscillating member secured to said shaft, means controlled by the running of the engine for moving the said oscillatory member in one direction, said means comprising a reciprocating member adapted to engage said oscillatory member, and adjustable means for disengaging said reciprocating member from said oscillatory member.

10 15. In igniters for explosive engines, the combination with an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a shaft carrying said armature, an oscillatory member secured to said shaft, a reciprocating member controlled by the running of the engine for moving the said oscillatory member and the armature in the opposite direction, means for separating the electrodes when the armature and the oscillatory member are moved

541428

16

Seal Required

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1910

788

3043

in said opposite direction, and means for timing the movement of said oscillatory member and said armature in said opposite direction.

per A

14. The combination in an explosive engine, of an electric igniter, of means for operating the said igniter by the running of the engine, means controlled by the running of the engine for opening the exhaust valve of the engine, and means controlled by the exhaust valve operating means for rendering the igniter operating means inoperative.

per C

11 15. The combination in an explosion engine of an electric igniter comprising an oscillating armature or inductor within a magnetic field, means for oscillating the armature or inductor comprising a reciprocating member and elastic means for returning the armature or inductor to normal after being disengaged from said reciprocating member, carried by the reciprocating member

*Matter in italics in parentheses, stricken out in original transcript.

pr A

and adjustable means ^Λ for disengaging the reciprocating member from the armature or inductor.

12 16. The combination in an explosive engine of an electric igniter comprising an oscillating armature or inductor within a magnetic field, means for oscillating the armature or inductor comprising a reciprocating member and elastic means for returning the armature or inductor to normal after being disengaged from said reciprocating member, adjustable means for disengaging the reciprocating member from the armature or inductor, exhaust valve operating means and adjustable means under the control of the exhaust valve operating means for rendering the said means for oscillating the armature or inductor inoperative.

per A

541428

17

17. The combination in an explosive engine, of an electric igniter, means for operating the igniter, means for governing the speed of the engine, and means controlled by the speed governing means for rendering the igniter operating means inopera-

Seal Required

(In left-hand margin) 2:2:10

(Endorsed) Jan 29 1919

789

3044

tive.

18. The combination in an explosive engine, of an igniter, exhaust valve operating means controlled by the running of the engine and means under the control of the exhaust valve operating means for rendering the igniter inoperative.

19. The combination in an explosive engine, of an igniter, a speed governor, and means under the control of the speed governor for rendering the igniter inoperative.

per C

13 20/ The combination in an explosive engine, generator

pr A

of an igniter, means for operating the igniter ^Λ by the running of the engine, a speed governor operated by the running of the engine, and means under

*Matter in italics in parentheses, stricken out in original transcript.

the control of the speed governor for rendering the generator

“ “ *igniter \wedge inoperative.*

21. *The combination in an explosive engine, of an igniter, exhaust valve operating means, and means under the control of the exhaust valve operating means for rendering the igniter inoperative.*

per A 22. *The combination in an explosive engine, of an igniter, an exhaust valve, means for operating the exhaust valve by the running of the engine, a speed governor, and means under the control of the speed governor for simultaneously opening the exhaust valve and rendering the igniter inoperative.*

548428

18

14 25. *The combination in an explosive engine generator*

pr A *of an electric igniter \wedge , means controlled by the running of the engine for operating the igniter \wedge an exhaust valve, means controlled by the running of the engine for operating the exhaust valve, a speed governor, and means under the control of the speed governor for simultaneously opening the exhaust generator*

“ “ *valve and rendering the igniter \wedge inoperative.*

per C
“ “
*(Insert
A¹)

>—
(In left-hand margin) 2:2:10
Seal Required
(Endorsed) Jan 29 1919

790

3045

per A 24. *The combination in an explosive engine, of an electric igniter, means controlled by the running of the engine for operating the igniter, an exhaust valve, means controlled by the running of the engine for operating the exhaust valve, a speed governor, and means under the control of the speed governor for simultaneously opening the exhaust valve and rendering the igniter operating means inoperative.)*

548428

19

(In left-hand margin) 2:2:10
(Endorsed) Jan 29 1919

791

3046

In testimony whereof I have signed my name to this specification, in the presence of two subscribing witnesses, on this 22nd day of January, A. D. 1910.

EDMUND JOSEPH KANE

Witnesses:

A. L. SPRINKLE,
M. W. CANTWELL.

OATH.

State of Illinois {
County of Cook { ss.

EDMUND JOSEPH KANE the above named petitioner being duly sworn (affirmed), deposes and says that he is a citizen of the United States and resident of Chicago in the County of Cook and State of Illinois that he verily believes himself to be the original, first, and sole inventor of the improvement in Electric Igniters for Explosive Engines described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

(3) Inventor's signature EDMUND JOSEPH KANE

Sworn to and subscribed before me this 22nd day of January A. D. * (190) 1910.

M. W. CANTWELL
Notary Public.

541428

20

Notarial Seal Required

(Across face) 2:2:10

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

Div. 28 Room 63

Paper No. 2

244

Address only The Commis-
sioner of Patents, Wash-
ington, D. C.

All communications respecting
this application should give
the serial number, date of fil-
ing, and title of invention.

RYH

DEPARTMENT OF THE INTERIOR,
United States Patent Office.

Washington, D. C., March 26, 1910.

(Rubber stamp) U. S. Patent Office Mar 26 1910 Mailed
Edward Joseph Kane,
c/o Brown & Hopkins,
#1124 Monadnock Block, Chicago, Ill.

Please find below a communication from the Examiner in
charge of your application, S. No. 541,428, filed Feb. 2, 1910,
Electric Igniters for Explosive Engines.

E. B. MOORE,
Commissioner of Patents.

This case has been examined.

The particular type of oscillating magneto employed with
this engine is not sufficiently illustrated. Since the magneto
structure is made subject-matter for the claims, further illus-
tration is necessary.

The claims are all rejected as not requiring invention over
Bates, 946,816, Jan. 18, 1910 (123-152), in view of Weber,
820,535, May 15, 1906 (123-149).

No invention would be required to adapt the oscillating
magneto of Weber to the engine of Bates.

Applicant should also see

Longenecker, 862,568, Aug. 6, 1907 (123-150)

Packard, 780,221, Jan. 17, 1905 (123-149).

541428

21

MEW

A R BENSON
Asst Examiner.

(Endorsed) Jan 29 1919

3

IN THE UNITED STATES PATENT OFFICE.

Sir:

Erase claims 4 to 6, inclusive.

541428

22

(In left-hand margin) 3:15:11

(Endorsed) Jan 29 1919

794 Claim 7, line 1, before "ignitor" insert "an". Lines 2 and 3, change "mechanism" to "generator" and in line 8 change "igniter operating means" to "generator".

Renumber claims 7 to 13 inclusive as 4 to 10 inclusive.

Erase claim 14.

Claim 15, line 6, after "means" insert "carried by the reciprocating member".

Renumber claims 15 and 16 as 11 and 12, respectively.

Erase claims 17 to 19, inclusive.

Claim 20, in lines 2 and 5 respectively, after "ignitor" insert "generator".

Renumber claim 20 as 13.

Erase claims 21 and 22.

Claim 23, in lines 2, 3 and 7, after "ignitor" insert "generator".

Renumber claim 23 as claim 14.

Erase claim 24.

Add the following claims:

per C

*(A)

*(15. *The combination in an explosive engine, of an electric ignitor comprising an oscillatory armature or inductor within a magnetic field, a constantly and positively operated exhaust valve operating cam shaft, means for oscillating the armature or inductor comprising a reciprocating member operated directly from the said exhaust valve operating cam shaft, means for causing said reciprocating member to engage and be disengaged from the armature or inductor, elastic means for returning the armature or inductor to normal after being disengaged from said reciprocating member, adjustable means for disengaging the reciprocating member from the armature or inductor, exhaust valve operating means comprising a reciprocating member operated from the said exhaust*

*Matter in italics in parentheses, stricken out in original transcript.

cam
valve operating / shaft, an adjustable wedge block
on the said reciprocating member for oscillating
the armature or inductor, and means on the said
exhaust valve operating rod for engaging said

541428
23

-2-

(In left-hand margin) 3:15:11
(Endorsed) Jan 29 1919

795

wedge block for rendering the armature or induc-
tor inoperative under the control of the exhaust
valve operating rod.

16. The combination in an explosive engine, of
an electric igniter comprising an oscillatory arma-
ture or inductor within a magnetic field, a con-
stantly and positively operated exhaust valve op-
erating cam shaft, means for oscillating the arma-
ture or inductor comprising a reciprocating mem-
ber operated directly from the said exhaust valve
operating cam shaft, means for causing said os-
cillating means to engage and be disengaged from
the armature or inductor, elastic means for return-
ing the armature or inductor to normal after be-
ing disengaged from said reciprocating member,
adjustable means for disengaging the reciprocating
member from the armature or inductor, exhaust
valve operating means comprising a reciprocating
member operated from the said exhaust valve op-
erating cam shaft, an adjustable wedge block on
the said reciprocating member for oscillating the
armature or inductor, and means carried by the
exhaust valve operating rod comprising a branch
fixed thereto and carrying an anti-friction roller
for engaging the said wedge block to render the
igniter inoperative under the control of the exhaust
valve operating rod.)

per C
*(Insert
B¹)

>

Remarks.

This application, including the claims, has been thoroughly
revised in view of the references cited by the Examiner. It
is believed that the claims which are now in the case and
which have been revised and restricted are commensurate

*Matter in italics in parentheses, stricken out in original transcript.

with the scope of the invention in view of the prior art and should be allowed.

Referring first to the references relied upon by the Examiner, it should be noted that the claims as now restricted do not conflict with the Longenecker and Packard patents, both of which are apparently directed to mean for varying the time of the spark according to the speed of the engine, and are not adapted to entirely cut out the spark when the engine

541428

24

—3—

(In left-hand margin) 3:15:11

(Endorsed) Jan 29 1919

796 is up to speed, but simply varying the time of the spark for the purpose of regulating the speed of the engine.

The Packard construction also differs from that of applicant's in that it employs a constantly rotating generator and its regulation is directed solely to varying the instant of separating the electrodes, which in this manner governs the time of the spark, advancing or retarding the same.

In Applicant's device the advance and retardation of the spark is controlled by an adjustable wedge block 62 on the igniter operating member 36. The fixed support 60 carrying the anti-friction roller 61 and the cooperating adjustable wedge block 64 on the magneto operating rod 36, which cut in or out the magneto or generator without varying the time of the spark, are the particular devices aimed to be covered in applicant's claims, and it is submitted that they do not find their counterpart in the Packard construction.

The same is true of the Longnecker device, which is merely intended to advance or retard the spark under the control of the governor in a make-and-break ignition system operated from a battery. It is believed that all the claims now in the case therefore clearly distinguish from Longnecker, which should be withdrawn as a reference.

With respect to the construction embodied in the Bates and Webber patents, upon which the Examiner has relied in rejecting claims, it is true that as the Examiner has observed, applicant has applied his improvement to a magneto of the type shown in this Webber patent. But that is as far as the comparison goes, and applicant's claims now are drawn to distinguish over the construction of Webber, which is faulty because it is constantly operating, there being no means for stopping the operation of the magneto or generator when the

engine is up to speed, but in Webber although the time of the spark may be advanced or retarded while the engine is in motion, the spark is being constantly generated even when not needed and this delicate mechanism thus subjected to un-

541428
25

—4—

(In left-hand margin) 3:15:11

(Endorsed) Jan 29 1919

797 due and useless vibrations or oscillations which shorten the life of it. This is the feature that applicant has attempted to accomplish by his invention, and is one not found in any of the references. It is true that as the Examiner observes, the patent to Bates discloses igniter mechanism operated from a battery and means on the exhaust valve operating rod for breaking the circuit when the engine reaches a given speed or passes beyond same, but Bates has not shown ^{*}(in) his invention applied to a modern ignition system embodying a magneto or generator. Therefore, it is believed that the claims which now remain in the case are clearly allowable over the Bates patent as embodying useful and novel improvements and marking a distinct advance in this art. Applicant cannot agree with the Examiner that no invention would be required in perfecting the Webber device in view of Bates or other prior references which show Bates' idea as applied to a battery make-and-break ignition system. The best answer to the Examiner's argument is that Bates did not perfect his invention so that it could be applied to a magneto and did not even hint at such a thing. It remained for applicant to perfect the Webber type of oscillating magneto or generator by showing how it may be relieved of absolutely useless and unnecessary work and its life prolonged, a result which with respect to magneto or generator ignition neither Bates nor any of the prior patentees accomplished.

An allowance of the case in its present form is solicited.

Respectfully submitted,

541428

26

Chicago, Ills.,

March 11, 1911.

(In left-hand margin) 3:15:11

(Endorsed) Jan 29 1919

BROWN & HOPKINS
Attorneys for Applicant.

798 (Rubber stamps) Mail Room Mar 16 1911 U. S. Patent
Office. U. S. Patent Office Mar 17 1911 Division XXVIII.

V

4

IN THE UNITED STATES PATENT OFFICE.

Div. 28, Room 63.

Edward Joseph Kane,
Electric Igniters for Explosive Engines,
Serial No. 541,428,
Filed February 2, 1910.

Hon. Commissioner of Patents,
B Washington, D. C.

Sir:

In the above entitled matter and supplementary to the
amendment dated March 11, 1911, responsive to office action
of March 26, 1910, please insert the following claims:

per C * (17. *In an explosive engine, the combination
with an electric circuit having included therein
fixed and movable electrodes, of means for holding
the electrodes normally in contact with each other,*
*(B¹) *a magnetic field, an inductor or armature movably
mounted in said field, means for operating the in-
ductor or armature by the running of the engine,
an arm on said movable electrode, and an arm se-
cured to and movable with the inductor or armature
and adapted to have direct engagement with the
said arm on the movable electrode to separate the
said electrodes.*

18. *In an explosive engine, the combination with
an electric circuit having included therein fixed and
movable electrodes, of means for holding the elec-
trodes normally in contact with each other, a mag-
netic field, an inductor or armature movably
mounted in said field, means for operating the in-
ductor or armature by the running of the engine,
an arm on said movable electrode, an arm secured
541428 (In left-hand margin) 3:16:11
27 (Endorsed) Jan 29 1919*

799

—2—

*to and movable with the inductor or armature and
adapted to have operative engagement with the
said arm on the movable electrode, and an adjust-*

*Matter in italics in parentheses, stricken out in original transcript.

able head secured to said arm on the movable electrode for engagement with the movable arm on the inductor or armature.)

Remarks.

The above claims are specific to applicant's construction, and since they are believed to be directed to features of novelty over the art as cited, favorable consideration and allowance of same is asked.

Respectfully submitted,

BROWN & HOPKINS
Attorneys for Applicant.
B & H.

Chicago, Ill.,

March 13, 1911.

541428

28

(In left-hand margin) 3:16:11

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

Div. 28. Room 63

Paper No. 5

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number, date of filing, and title of invention.

DEPARTMENT OF THE INTERIOR

HHM

United States Patent Office

Washington

May 4, 1911.

(Rubber stamp) U. S. Patent Office. May 4, 1911 Mailed.
Edmund Joseph Kane,
c/o Brown & Hopkins,

1124 Monadnock Block, Chicago, Ill.

Please find below a communication from the Examiner in charge of your application. S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

E. B. MOORE,
Commissioner of Patents.

Case considered in view of communications of Mar 15, and 16, 1911.

Claims 1 to 14, inclusive, are rejected as not requiring any invention over Bates, in view of Webber.

Claims 15 and 16 are rejected on the references *supra*, in view of the adjustable block on the igniter rod 16 in Longenecker, o*(r) record.

Claims 17 and 18 contain the precise elements and the precise arrangement thereof as disclosed in Bates and for this reason these claims are rejected.

Applicant appears to be of the opinion that it would be invention to render that type of oscillating armature igniter shown in Webber., inoperative at speeds above normal even if this idea has been applied to a make and break igniter having a battery as a source of current rather than an oscillating armature as shown in Bates. However, the office cannot

*Matter in italics in parentheses, stricken out in original transcript.

subscribe to this view and for this reason the claims have been rejected.

MEW
541428
29

BENSON
Examiner.

(Endorsed) Jan 29 1919

801 (Rubber stamps) Mail Room Feb 17 1912 U. S. Patent Office U. S. Patent Office Feb 17 1912 Division XXVIII.

V
IN THE UNITED STATES PATENT OFFICE.

Div. 28, Room 63,
Edmund Joseph Kane,
Electric Igniters for Explosive Engines.
Filed Feb. 2nd, 1910.
Serial Number 541,428.

Hon. Commissioner of Patents,
C Washington, D. C.

Sir:—

In response to office letter of May 4th, 1911, please amend as follows:

Erase all of the claims and substitute therefor the following:

*(1) *In an explosive engine, the combination with engine mechanism of a magneto, means for operating the magneto by the running of the engine, a speed governor operated by the engine and means under the control of the speed governor for rendering the magneto inoperative when the engine passes a predetermined speed.*

sub.
D¹

2. *The combination in an explosive engine having a speed governor and an exhaust valve operating rod of a magneto, means for operating the magneto by the running of the engine, governor mechanism operated by the engine for controlling the exhaust valve operating rod, and means under valve the control of the exhaust / operating rod for rendering the magneto operating means inoperative.*

*Matter in italics in parentheses, stricken out in original transcript.

Remarks.

Applicant has now carefully considered the prior art cited by the Examiner, and has erased the claims and substituted
541428

30

—1—

(In left-hand margin) 2:17:12

(Endorsed) Jan 29 1919

802 the two claims now in the case in the endeavor to simplify the issues.

Applicant's invention resides in the application of the magneto to the engine in connection with the means claimed for protecting the magneto by rendering it inoperative under governor control. This is an important invention, for the reasons brought out in the specification, and it is believed that the claims limited to their present form as they now appear, are allowable unless better references may be found.

Respectfully submitted,

BROWN & HOPKINS

Attorneys for Kane.

Chicago, Ill.,
February 14th, 1912.
541428

31

(In left-hand margin) 2:17:12

(Endorsed) Jan 29 1919

803

2—260

Div 28 Room 63

36

Paper No. 7

Address only "The Commissioner of Patents, Washington, D. C."

All communications respecting this application should give the serial number, date of filing, and title of invention.

DEPARTMENT OF THE INTERIOR

RYH

United States Patent Office

Washington

March 29, 1912.

(Rubber stamp) U. S. Patent Office, Mar 29 1912 Mailed
Edmund Joseph Kane,

c/o Brown & Hopkins,
#1124 Monadnock Block, Chicago, Ill.

Please find below a communication from the Examiner in charge of your application. S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

E. B. MOORE,
Commissioner of Patents.

Case considered as amended Feb. 17, 1912.

Claim 1 is indefinite on account of "engine mechanism of a magneto."

As far as understood, the claims are rejected as not requiring any invention over Bates and Weber, of record. It is noted that the two claims now in this case are substantially the same in scope as claims 13 and 14, which were cancelled in response to the last office rejection.

MEW
541428

32

BENSON
Examiner.

(Endorsed) Jan 29 1919

534

Defendants' Exhibit No. 54.

804

3047

IN THE UNITED STATES PATENT OFFICE.

8

(Rubber stamp) U. S. Patent Office, Feb 17 1913 Division XXVIII.

Div. 28, Room 63.

Edmund Joseph Kane,

Electric Igniters for Explosive Engines,

Filed Feb 2nd 1910,

Ser. No. 541,428.

The Commissioner of Patents,
D Washington, D. C.

Sir:—

In response to Office letter of March 29, 1912, please amend as follows:—

Substitute for the claims now in the case the following:—

D¹ 7 1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

541428 2. The combination in an explosive engine having a speed governor, and an exhaust valve operating rod operatively connected with the speed governor, of a magneto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.—

Insert.G¹>

(Cls 3-5)

(In left-hand margin) 2:15:13

(Endorsed) Jan 29 1919

805

3048

Remarks.

The claims have been rewritten merely for the sake of clearing up their phraseology to relieve them from the objections urged against their form by the Examiner, and to also render them more capable of being understood.

Unless the Examiner can find the entire combination of elements cited in these claims in a single structure organized and adapted to perform the functions of applicant's device it is believed that these claims should be allowed. So far as the art has been cited applicant appears to be the first to
in

provide means [^] a gas engine combination, by which a magneto is cut out or allowed to remain inoperative when the exhaust valve kept open under the control of the governor.

The Examiner's argument is apparently that there would be no invention in substituting in the Bates combination an igniting device of another character. Whether or not the substitution of the new element into the combination is of *(is)* the "happy thought" variety of invention, is immaterial because the results obtained by the new combination is different from the results of the Bates combination. Bates economizes on battery current while applicant lengthens the life of the physical parts of the magneto.

After the result has been obtained as the Supreme Court has said on numerous occasions, it may appear that an ordinary mechanic would have known how to arrive at the same result. But the best answer to this is as the Court also says, "it has not been done before".

Respectfully submitted,

Feb. 15, 1913.

BROWN & HOPKINS,
BROWN HOPKINS NISSEN & SPRINKLE
Attorneys for Kane.

541428

34

(In left-hand margin) 2:15:13
(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

Div. 28 Room 63 436

Paper No. 9

Address only "The Commissioner of Patents, Washington, D. C." All communications respecting this application should give the serial number, date of filing, and title of invention.

DEPARTMENT OF THE INTERIOR

RYH

United States Patent Office

Washington

April 22, 1913.

(Rubber stamp) U. S. Patent Office, Apr 22 1913 Mailed.
Brown & Hopkins,
#1124 Monadnock Block, Chicago,
Ill.

Please find below a communication from the Examiner in charge of the application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

E. B. MOORE,

e6-2631

Commissioner of Patents.

Case considered as amended Feb. 15, 1913.

Page 1, line 10, "ignitor" should be igniter.

Applicant's remarks have been carefully considered, but the examiner is of the opinion that the new claims are anticipated by the references of record.

The claims are rejected on the patent to Bates, 946,816, of record, since it would not involve invention to substitute for the igniting device therein an igniter of the type claimed, in view of the patent to

Weber, 820,535, of record.

Further amendment in this case will be permitted only in the discretion of the examiner.

BENSON

Examiner.

HJS

541428

35

(Endorsed) Jan 29 1919

807

Days 28
10

(Rubber stamps) Mail Room Feb 19 1914 U. S. Patent
Office U. S. Patent Office, Feb 21 1914 Division XXVIII.

IN THE UNITED STATES PATENT OFFICE.

Division 28, Room 63

Application of Edmund Joseph Kane,
Improvement in Electric Igniters for Explosion Engines.
Filed February 2, 1910.
Serial Number 541,428.

To the Commissioner of Patents,
Washington, D. C.

Sir:—

The power of attorney heretofore given in the above-entitled application to Messrs. Brown & Hopkins, (a firm composed of Frank T. Brown and Francis A. Hopkins,), having been revoked by the the death of Francis A. Hopkins, of said firm, I hereby appoint Brown, Nissen & Sprinkle (a firm composed of Frank T. Brown, Charles M. Nissen and Arthur L. Sprinkle), with offices at 1124 Monadnock Block, Chicago, Illinois, as my true and lawful attorneys, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Chicago, in the County of Cook and State of Illinois, this 16 day of February, 1914.

EDMUND JOSEPH KANE.

541428

36

(Endorsed) Jan 29 1919.

(Rubber stamps) Mail Room Apr 18 1914 U. S. Patent Office U. S. Patent Office, Apr 20 1914 Division XXVIII.

✓

IN THE UNITED STATES PATENT OFFICE.

Div. 28, Room 63.
Edmund Joseph Kane.
Electric Igniter for Explosive Engines.
Filed February 2, 1910.
Serial No. 541,428.
The Commissioner of Patents,
Washington, D. C.

Sir:—

E In the above entitled matter and in response to office letter of April 22, 1913, please amend as follows:—

Page 1 line 10—change “ignitor” to “igniter”.

Remarks.

Applicant requests an action allowing the claims or finally rejecting them in order to put the application in condition for appeal, and in support of his contention that the claims are patentable over the references cited, would supplement the remarks contained in the Amendment of February 15, 1913, by calling the Examiner's attention to the Federal Court Case, *Smith vs. Macbeth*, 67 Fed. 137, in which the defendant contended that the features were found in two older machines and could have been combined without the exercise of inventive skill. The Court said in substance that it is true anybody could have done this if he had ascertained the cause of the defect in the Siemen's machine, the kind of motion, and the proper means of applying it, which would obviate the defect, and the Court added that the like and theories of a similar character, assumes what is not apparent; namely, that

541428

37

(Endorsed) Jan 29 1919

809 the cause of the pre-existing defect, and its remedy were open to the discernment of the skilled mechanic.

Applying this to the present case, the Bates invention was directed to the economy of a battery current. Prior to Kane,

there was no attempt made to stop the operation of a magneto when the engine cut out. Therefore, Kane has done more than mere substitution of elements as the Examiner contends. He has discovered the desirability of shielding the delicate mechanism of a magneto when the current generated by its operation would be wasted, and he has remedied the defect not by economy of current, but by stopping the operation of the mechanism, which Bates never attempted to do. Thus we see in applicant's invention, as embodied in claims 1 and 2, both the means is novel and the result is novel over the device relied upon by the Examiner in previously rejecting the claims.

The attention of the Examiner is also called to the following Federal Court Cases in support of applicant's contention:—

Packard vs Lacing, 70 Fed. 66;

Hatch vs Electric, 100 “ 975;

Goss vs. Scott, 108 “ 253;

Imperial vs Crown, 139 “ 312.

Respectfully submitted,

BROWN NISSEN & SPRINKLE

Attorneys for Applicant

541428

38

(Endorsed) Jan 29 1919

540

Defendants' Exhibit No. 54.

810

2-260

Div 28 Room 63

Paper No. 12

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR

RYH

United States Patent Office

Washington

May 9, 1914.

(Rubber stamp) U. S. Patent Office, May 9 1914 Mailed.
Brown, Nissen & Sprinkle,
#1124 Monadnock Block. Chicago,

Ill.

80

Please find below a communication from the Examiner in charge of the application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

THOMAS EWING

Commissioner of Patents.

c6-2631

Case considered as amended April 18, 1914.

The claims are finally rejected on the Bates and Weber patents, for the reasons given in the previous office action.

HJS

Benson

541428

Examiner.

39

(Endorsed) Jan 29 1919

811

2

13

Div 28

(Rubber stamps) Mail Room Oct 22 1914 U. S. Patent
Office U. S. Patent Office, Oct 24 1914 Division XXVIII.

✓

IN THE UNITED STATES PATENT OFFICE.

Division 28 Room 63,

Edmund Joseph Kane,
Electric Igniters for Explosive Engines,

F Filed February 2, 1910,

Serial No. 541,428.

The Commissioner of Patents,
Washington, D. C.

Sir:

not entered

H. J. S.

F¹

Not
entered

not shown
nor descr. >
show ✓
describe;
541428
40

**(In the above entitled application and in accordance with the reasons set forth in the attached affidavit of applicant and the provisions of rule 68, please amend by adding the following claims:*

3. *In combination, a field magnet, an inductor mounted upon a shaft for oscillation relative to the field magnet, a yoke mounted upon the shaft for oscillation with the inductor, an operating arm carried by the yoke, a reciprocating member driven by an internal combustion engine to engage the operating arm to swing the yoke in one direction, means for disengaging the reciprocating member from the operating arm to permit the oscillating parts to return to their normal position, spring mechanism connected with the diametrically opposite arms of the yoke, to return it to the normal position when relieved of the pressure of the reciprocating member, a curved cam surface on one arm of the yoke, a fixed electrical contact and a swinging electrical contact in the combustion chamber of the internal combustion engine, a spindle upon which the swinging contact is*

(Endorsed) Jan 29 1919

812

mounted, a push finger mounted upon the con-

*Matter in italics in parentheses, stricken out in original transcript.

tact and spindle and carrying an anvil normally disengaged from the cam surface of the yoke but adapted to be engaged by the cam surface upon the overthrow of the oscillating yoke to separate the electrical contacts, and a light spring acting to bring the swinging contact and the push finger into their normal positions.

4. In a device of the class described, a suitable field magnet, an inductor adapted for oscillating with respect to the field magnet, a yoke rigidly connected with the inductor and having projections at diametrically opposite points, main actuating springs connecting the projections of the yoke with suitable stationary projections on the frame, the said actuating springs tending always to return the oscillating members to their normal positions, a pair of electrical contacts in the combustion chamber of an internal combustion engine, a light spring tending to maintain the closure of said electrical contacts, a push finger adapted when struck to separate the electrical contacts against the tension of the light spring, a curved cam surface on the yoke adapted to engage the push finger upon the overthrow of the yoke when returned to its normal position by the main actuating springs, an operating arm associated with the yoke, and reciprocating mechanism driven by the internal combustion engine to engage the operating arm to swing the yoke and the inductor out of their normal position.

5. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation within the field magnet, a pair of main actuating springs, each connected at one end with the field magnet frame, an integral yoke member rigidly connected with the inductor, the main actuating springs being connected at their

541428

41

-2-

(Endorsed) Jan 29 1919

813

free ends with the said yoke member, an operating arm constituting a part of the integral yoke

*Matter in italics in parentheses, stricken out in original transcript.

member and adapted to be engaged by a reciprocating member driven by an internal combustion engine, separable contact points within the combustion chamber of the internal combustion engine, a light spring tending to maintain the closure of the electrical contacts, and mechanism adapted to be engaged by a cam surface on the yoke member to cause the separation of said contacts in opposition to the tension of the said light spring.

6. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation therein, spring mechanism tending to return the inductor to its normal position when moved out of said normal position, an operating arm for turning the inductor out of its normal position, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod being adapted normally to engage the end of the inductor-operating arm, means for shifting the path of travel of the reciprocating rod to determine its engagement with the operating arm, generating windings supported by the field magnet, separable electrical contacts in the combus-

15 of Milton
30 of Kane

V

tion chamber of the engine, and a member fixed relative to the inductor adapted to effect the operation of said contacts to create an ignition spark within the combustion chamber of the engine.

7. In a device of the class described, a field magnet, an inductor mounted for oscillation therein, an operating arm for said inductor, a reciprocating actuating rod driven from the shaft of an internal combustion engine, the end of the reciprocating rod adapted normally to

541428
42

—3—

(Endorsed) Jan 29 1919

814

engage the end of the inductor-operating arm, generating windings supported by the field magnet, separable electrical contacts in the combus-

*Matter in italics in parentheses, stricken out in original transcript.

tion chamber of the engine, and an impact member fixed relatively to the inductor adapted to separate said contacts to create a spark in the combustion chamber.

8. *In a device of the class described, a field magnet, a shaft, an inductor mounted upon the shaft for oscillation relative to the field magnet, a yoke mounted upon said shaft for oscillation with said inductor, springs tending to retain the inductor and shaft in normal position, an engine-driven member for oscillating said shaft and parts carried thereby, separable electrical contacts within the combustion cylinder of the engine, and an impact member fixed relative to the inductor and shaft arranged to effect the separation of said contacts to create an ignition spark in the combustion chamber of the engine.)*

Remarks.

The above claims taken from patent No. 1,096,048, granted May 12, 1914, to J. L. Milton, 1 to 6 verbatim thereof, are sought to be entered in accordance with the provisions of Rule 68.

Applicant has just discovered that this Milton patent has been granted, and the claims are entered for the purpose of securing an interference with said patent.

As set forth in the accompanying affidavit of the inventor and applicant, it is expected to be shown that Milton was not the inventor of the subject matter of said claims and that the invention embodied therein was derived from applicant who is the prior and only inventor and disclosed the complete in-
541428

43

—4—

(Endorsed) Jan 29 1919

815 vention to the patentee Milton while both were in the employ and in the designing room of the Webster Electric Company of Chicago.

The most casual examination of the devices will show that they are practically identical in construction and mode of operation, and as the application of Kane was filed February 2, 1910, almost nine months before the application was filed

*Matter in italics in parentheses, stricken out in original transcript.

on which the Milton patent issued, the latter having been filed October 28, 1910, and patented May 12, 1914, it will be apparent that both applications were pending contemporaneously.

It is also apparent that under the provisions of rule 96 the Examiner should have suggested the claims added by the above amendment to Kane before the Milton patent was passed to issue, and it is to correct this apparent oversight on the part of the Office that applicant now adds these claims by amendment immediately upon the discovery by him that the patent has been granted, and requests that an interference be declared without delay.

Rule 96 is as follows:

"Whenever the claims of two or more applications differ in phraseology, but cover substantially the same patentable subject-matter, the Examiner, when one of the applications is ready for allowance, will suggest to the parties such claims as are necessary to cover the common invention in substantially the same language."

The Examiner's attention is called to the subject-matter embraced in original claims 8, 9, 10, 11, 12, 13 and 15 of the Kane application as originally filed on February 2, 1910.

While these claims are not in the exact language of the 541428

44

—5—

(Endorsed) Jan 29 1919

816 claims of the patent with which interference is sought, they are essentially the same subject-matter and the showing in the drawings and specification seems to be identical, with the possible exception of one little detail wherein Milton shows the eccentric means connected with the starting lever 29 for raising and lowering the roller 23, and a slightly modified form of the device for rendering the engine reciprocating rod inoperative. Otherwise, it will be seen that the devices as shown and described are practically identical, or as nearly so as it would be possible for two draftsmen and solicitors to prepare identical specifications and drawings of the same device.

The Examiner's attention is also directed to claims 15 and 16 of the amendment of March 15, 1911, taken in connection with the statement contained in the paragraph from line 57 to line 65, page 1 of the Milton patent.

Attention is also directed to claims 17 and 18 contained in the amendment of March 16, 1911, directed to the same sub-

ject-matter but phrased somewhat differently from the claims above referred to taken from the Milton patent, which, since it was filed October 28, 1910, was of course pending in March, 1911.

It is believed that a consideration of the above facts apparent on the record will indicate that there has been an oversight on the part of the Office in failing to suggest to applicant, under the provisions of Rule 96, he being the senior party, the above claims, prior to the grant of the Milton patent, and to correct this apparent error and to restore applicant's rights, nunc pro tunc, under under Rule 96 that this

541428

45

—6—

(Endorsed) Jan 29 1919

817 amendment is filed and it is requested that an interference be declared in due course.

The Examiner's attention is called to the fact that there can be no question as to intervening rights (*Miller v. Brass Co.*, 104 U. S. 352; *Railroad Co. v. Sayles*, 97 U. S. 554; *Bechman v. Wood*, 15 App. D. C. 484) but it is submitted that the present case, in view of applicant's affidavit regarding disclosure of the invention to the patentee Milton in the year 1909, in the City of Chicago, brings the present case under the doctrine laid down in *Lotz v. Kenny*, 135 O. G. 1801; *Phillips v. Sensenich*, 134 O. G. 1806; *McBerty v. Cook*, 16 App. D. C. 133; *Luger v. Browning*, 21 App. D. C. 201; *Furman v. Dean*, 24 App. D. C. 277.

Respectfully submitted,

BROWN NISSEN & SPRINKLE
Attorneys for Edmund J. Kane.

Chicago, Illinois,
October 13, 1914.

541428

46

—7—

(Endorsed) Jan 29 1919

818 (Rubber stamps) Mail Room Oct 22 1914 U. S. Patent Office. U. S. Patent Office, Oct 24 1914 Division XXVIII.

IN THE UNITED STATES PATENT OFFICE.

Division 28, Room 63,
Edmund Joseph Kane,
Electric Igniters for Explosive Engines,
Filed February 2, 1910,
Serial No. 541,428.

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

EDMUND JOSEPH KANE, whose application for Letters Patent for an improvement in Electric Igniters for Explosive Engines, Serial No. 541,428, was filed in the U. S. Patent Office on or about the 2nd day of February, 1910, being duly sworn, deposes and says that he has carefully considered the subject matter of the attached amendment to his aforesaid application, which amendment has been prepared in conference with his attorneys of record, Brown, Nissen & Sprinkle; that he understands the subject matter of the new claims 3 to 8 inclusive, which are submitted in the accompanying amendment to his said application; these claims being taken verbatim from a patent granted May 12, 1914, to John L. Milton of Tiffin, Ohio, No. 1,096,048.

Affiant further states that he has carefully examined the drawings and specification of the said Milton patent and it is directed to subject matter practically identical with the disclosure contained in applicant's original specification and drawings as filed February 2, 1910.

541428

47

(Endorsed) Jan 29 1919

819 Affiant further states that he has examined carefully the file record of his application and he finds that as his application was originally filed and as it continued for a long time during the prosecution of the same it contained a number of claims, such for example as claims 8 to 13 and claim

15 of the application as originally filed on February 2, 1910, which are directed to the same subject matter as the six claims of the Milton patent numbered in the said amendment as claims 3 to 8 inclusive. Affiant also finds that claims 15 and 16 of the amendment of March 15, 1911, and claims 17 and 18 contained in the amendment of March 16, 1911, are directed to the same subject matter but phrased somewhat differently from the claims above referred to taken from the Milton patent, and that since the Milton patent application was filed October 28, 1910, it was, of course, pending in March 1911, wherefore applicant is advised that the Examiner, under Rule 96, would have been warranted in suggesting the claims of the Milton patent to Affiant when the Milton application was in condition for allowance and prior to its allowance under the provisions of Rule 96.

Affiant further states that a careful examination of claim 4 of the Milton patent shows that this claim is directed to a combination of elements, among others, of "means for shifting the path of travel of the reciprocating rod to determine its engagement with the operating arm." This means may be the lever 44 of the Milton patent (See Fig. 1) or it may be the shifting roller 61 and its cooperating cam 64 on the reciprocating rod of the engine shown in applicant's drawings. Since all of the other elements of the claim are found in Affiant's application if they are found in the device of the 541428

48

—2—

(Endorsed) Jan 29 1919

820 Milton patent because, as stated, the two are identical,

Affiant is of the opinion that the disclosures of the Milton patent and Affiant's application in view of applicant's claims, which are in condition for appeal, and claim 4 of the Milton patent should have been sufficient grounds for the suggestion of the Milton claims to applicant by the Examiner under the provisions of Rule 96.

Affiant will state further that he expects to prove the invention of the five claims of the Milton patent No. 1,096,048 was Affiant's invention and that it was communicated to John L. Milton while both Affiant and said Milton were in the employ of the same manufacturing concern in the City of Chicago in the year 1909, and that the said Milton was not only not the first inventor of the subject matter of the patent but

that he was not the inventor of any part of the invention as claimed in said claims 1 to 6 inclusive, of the Milton patent.

Affiant states that the invention as it appears in the drawings of his application was disclosed to his attorneys and was substantially claimed in the claims referred to which were pending contemporaneously with the Milton patent and at the time of the grant of the six claims of the Milton patent.

Affiant further states that it is not his desire to abandon the subject matter of the claims submitted by the accompanying amendment and the reason why these identical claims were not sooner submitted is that applicant was not, prior to this time, aware of the grant of these claims to John L. Milton, and Affiant has been, until the present time, in ignorance of the fact that John L. Milton or any other person or

541428
49

—3—

(Endorsed) Jan 29 1919

821 persons had set up a claim to the invention disclosed in said application.

Affiant further affirms that had he been advised prior to this time by the Examiner under the provisions of Rule 96 of these claims made by said John L. Milton covering the common subject matter of the Milton patent and Affiant's application, he would have made these identical claims heretofore and at the earliest possible moment, and that the error, if there has been one on his part, has arisen through inadvertence, accident or mistake and without any fraudulent or deceptive intention.

Further Affiant saith not.

EDMUND JOSEPH KANE.

Subscribed and sworn to before me this 15th day of October 1914.

WM C. WRATH
Notary Public.

541428

50

—4—

(Endorsed) Jan 29 1919

Div. 28 Room 63 346

Paper No. 14

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR

RYH.

United States Patent Office

Washington

Nov. 12, 1914.

(Rubber stamp) U. S. Patent Office, Nov 12 1914 Mailed.
Brown, Nissen & Sprinkle,
#1124 Monadnock Block, Chicago.

III.

Please find below a communication from the Examiner in charge of the application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

THOMAS EWING

c6—2031

Commissioner of Patents.

Case considered as amended Oct. 22, 1914.

The claims copied from the patent have not been entered in this case, since the amendment presenting these claims is not a proper response to the preceding office action. Applicant's showing as to why the claims were not earlier presented is deemed insufficient to warrant the admission of the claims under Rule 68.

As an additional reason why the patented claims cannot be permitted in this case, it is pointed out that the claims of the patent define an invention different from that defined by the claims remaining in this case. The claims of the patent are drawn to a magneto or spⁱr^ak^er, while the claims in this case are drawn to a combined valve and sparker operating means. These two devices are separate inventions, and are separately classified in this office; hence claims to both cannot be now permitted in this case.

If applicant wishes to contest in interference the invention covered by the claims of the patent, he can do so only by filing a divisional application of this case and presenting therein the claims of the patent.

Applicant should make an action properly responding to the office action of May 9, 1914, on or before May 9, 1915, or the case will become abandoned on the latter date. See Rules 68 and 171.

F M HOPKINS

Asst Examiner in charge

HJS

541428

51

(Endorsed) Jan 29 1919

(Rubber stamps) Docket Clerk (date not legible) U. S. Patent Office \$10.00 received Feb 23 1915 Chief Clerk U. S. Patent Office U. S. Patent Office, Feb 25 1915 Division. XXVIII.

IN THE UNITED STATES PATENT OFFICE.

Edmund Joseph Kane,
Electric Igniters,
For Explosive Engines,
Filed February 2, 1910,
Serial Number 541,428,
Division 28, Room 63.
The Commissioner of Patents,
Washington, D. C.

Sir:—

We hereby appeal to the Examiners-in-Chief from the decision of the Primary Examiner in the above entitled application for Letters Patent, which was rejected the second time on May 9, 1914.

The following are the grounds on which the appeal is taken:

1. The Examiner erred in holding that the references of record anticipate the claims.
2. The Examiner erred in finally rejecting the claims on the reference Bates, in view of the reference Weber, of record.
3. The Examiner erred in not allowing the claims for the reasons given.

An oral hearing is requested.

Respectfully submitted,

BROWN NISSEN & SPRINKLE
Attorneys for Kane.

Chicago, Illinois,
February 19, 1915.
541428

52

Check for \$10.00 herewith.
(Endorsed) Jan 29 1919

824

Paper No. 16.

(Rubber stamp) U. S. Patent Office, Feb 27 1915
Mailed.

IN THE UNITED STATES PATENT OFFICE.

In re application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.	}	Before the Examiners-in-Chief, on Appeal.
---	---	---

EXAMINER'S STATEMENT.

The appealed claims are:

1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

2. The combination in an explosive engine having a speed governor, and an exhaust valve operating rod operatively connected with the speed governor, of a magneto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.

The references are:

Bates, 946,816, Jan. 18, 1910 (123-152)

Weber, 820,535, May 15, 1906 (123-149).

This invention relates to a combined sparker and valve operating mechanism.

As shown and described, the invention relates to that class of devices in which the speed of an engine is regulated by holding the exhaust valve open and rendering the igniter inoperative when the speed of the engine exceeds a predetermined value.

53

(Endorsed) Jan 29 1919

825

—2—

(Kane, 541,428).

terminated value. The igniter is of the oscillating magneto type and is shown in dotted lines in Fig. 1 secured to the side of the engine cylinder 1. The magneto is actuated by the trip rod 36 engaging the finger 35 secured to the

shaft of the magneto armature. The exhaust valve 43^b in the cylinder head is operated by the reciprocating rod 43. The main shaft 5 of the engine has secured thereto a fly-wheel carrying the centrifugal governor weights 50, 51, which, when the speed of the engine becomes excessive, are thrown out, thereby causing the latch 56 to be depressed and engage a notch in the member 57 to hold the exhaust valve open. The member 57 is secured to the valve operating rod 43. When the exhaust valve is thus held open, the roller 61 carried by the rod 43 engages the wedge block 64 mounted on the magneto trip-rod 36. This raises the rod 36 so that it will not engage the magneto operating finger 35 (see dotted line construction in Fig. 3). By this means, wear of the magneto parts and the production of useless sparks are avoided.

As defined by the claims, the invention comprises broadly the combination of a speed governor, a magneto, an exhaust valve, operating means for the magneto and valve, and means operated by the exhaust valve operating means to render the magneto inoperative.

The Bates patent discloses a device similar to applicant's. The exhaust valve is operated by the rod 12 and is held open by the governor when the engine speed becomes too great. An igniter 11, apparently of the make-and-break type, is secured in the side of the engine cylinder 10 and is operated by the trip rod 13. A rocker 21 is pivoted at 20 and carries

541428

54

(Endorsed) Jan 29 1919

826

—3—

(Kane, 541,428).

a roller 22 adapted to engage the trip rod 13. The rocker is adapted to be engaged by a pin or stud 23 secured to the exhaust valve operating rod 12. When the exhaust valve is held open through the action of the governor, the pin 23 oscillates the rocker 21 to lift the trip rod 13 into inoperative position. Thus the igniter remains inactive when the ex-

The Weber patent shows an oscillating magneto, similar to applicant's, mounted on the side of an engine cylinder 1. The exhaust valve is open, and wear and the production of useless sparks are avoided.

and adapted to be operated by a trip arm 35.

The claims are rejected on the Bates patent, modified in view of the Weber patent, it being held that there would be

no invention in substituting Weber's igniter or magneto for the igniter shown by Bates. The Bates patent shows the combination claimed, differing therefrom only in the form of means used to produce the spark.

It may be added that applicant, Bates, and Weber all employ make-and-break igniters of similar construction, applicant and Weber having their igniters secured directly to and operated with the magneto or source of electrical energy, while Bates' igniter is separated from the source of electrical energy, which latter is not shown.

HJS

Feb. 27, 1915,

Div. 28, Room 63.

BROWN, NISSEN & SPRINKLE,
#1124 Monadnock Block,
Chicago, Ill.

541428

55

(Endorsed) Jan 29 1919

A R BENSON

Examiner.

827

2—201

Copy

Address only	Appeal No. 8302.	Paper No. 17
The Commissioner of Patents,	Paper No.	
Washington, D. C.	Notice of Hearing	

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

March 5, 1915,

Sir:

Serial

The case of Edmund Joseph Kane ^{*}(*Intf.*) No. 541,428, will
^{*}(*Commissioner*)
be heard by the Examiners-in-Chief on the 7th day of April,
1915. ^{*}(*ten*)

The hearings will commence at one o'clock, and as soon as the argument in one case is concluded the succeeding case will be taken up.

If any party, or his attorney, shall not appear when the

^{*}Matter in italics in parentheses, stricken out in original transcript.

case is called, his right to an oral hearing will be regarded as waived.

The time allowed for arguments is as follows:

Ex parte cases, thirty minutes;

Motions, thirty minutes, each side;

Interference appeals, final hearing, one hour each side.

By special leave, obtained before the argument is commenced, the time may be extended.

The appellant shall have the right to open and conclude in interference cases, and in such case a full and fair opening must be made.

Briefs in interference appeals must be filed in accordance with the provisions of Rule 147.

Respectfully,

THOMAS EWING
Commissioner of Patents.

To BROWN, NISSEN & SPRINKLE—*Attys.*

1124 Monadnock Bl'd'g,

Chicago, Ill,

541428

56

To

6—1961

(Endorsed) Jan 29 1919

828

Appeal No. 8302 Paper No. 18
Brief.

(Rubber stamps) (Not legible) Mar 31 1915 U. S. Patent
Office. Examiner-in-Chief Mar 31 1915 U. S. Patent Office.

IN THE UNITED STATES PATENT OFFICE.

In re Application of Edmund Joseph Kane, Serial Number 541,428, Filed February 2, 1910, Electric Igniters for Explosive Engines.	} Before the Examiners-in-Chief, On Appeal.

BRIEF.

—O—

The appealed claims are:

1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of

the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

2. The combination in an explosive engine having a speed governor and an exhaust valve operating rod operatively connected with the speed governor, of a magneto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.

The Primary Examiner has rejected the above claims, and from his decision applicant has appealed, the references upon which the Examiner relied having been as follows:—

541428

57

(Endorsed) Jan 29 1919

829

—2—

Bates, No. 946,816, January 18, 1910. Igniter-Gear for Explosive Engines; and,

Weber, No. 820,535, May 15, 1906. Electric Igniter for The Examiner's position is well stated in his summary on page 3 of the statement, in which he says:—

"The claims are rejected on the Bates patent, modified in view of the Weber patent, it being held that there would be no invention in substituting Weber's igniter or magneto for the igniter shown by Bates. The Bates patent shows the combination claimed, differing therefrom only in the form of means used to produce the spark."

At the out-set, the attention of the Honorable Board is directed to the Examiner's statement as above quoted, in which he says that Bates shows the combination claimed, and then in the last clause of the same sentence virtually admits that he does not show the combination claimed, because he admits that Bates differs from applicant's combination in the form of means used to produce the spark.

with reference to a magneto
If we refer to the Bates patent, it will be found that [^] it is as silent as the sphinx. The part 11 is referred to in the specification of Bates as the igniter-electrode and the Bates specification makes it clear that the lifting of the igniter trip-rod 13 will "eliminate the spark which would otherwise

result." It may be assumed possibly as the Examiner assumes, that Bates intended to connect a battery with the electrode 11, which was probably intended to represent the usual movable electrode, so that when the electrode 11 is

541428

58

(Endorsed) Jan 29 1919

830

—3—

tripped, a spark will result. The Bates device clearly shows how to economize battery current by eliminating the spark through the shifting of the rocker-arm 21 by the exhaust valve operating rod when the exhaust valve is held open by the shifting of the rod 12 to the open position. As a matter of fact, Bates was not the first to devise means for economizing battery current by stopping the operation of a make-and-break sparking device under the control of the exhaust valve operating rod or of a speed governor. An inspection of the file of the Bates patent shows that the broader claims of Bates were all rejected upon the following earlier United States patents, all of which show means of various kinds for economizing battery current when the exhaust valve of a hydro-carbon engine is held open by a speed governor:

No. 597,326, Quast, January 11, 1898;

No. 624,975, Quast, May 16, 1899;

No. 844,759, Stickney, February 19, 1907;

No. 862,599, Witry, August 6, 1907.

Reference is made to this prior art, and to the Olds patent, No. 635,506, October 24, 1899, as being prior patents, all showing means for economizing battery current by the stopping of the operation of a make-and-break sparking mechanism when the engine is idling, because the speed governor holding open the exhaust valve, prevents the drawing in or compressing of a combustible charge.

541428

59

(Endorsed) Jan 29 1919

831

—4—

The Examiner admits that the Bates patent does not meet applicant's claims, and this is obvious because the magneto is made an element of each of the claims, but the Examiner refers to the Weber patent as an example in the prior art of a magneto of the oscillating type, and makes

the statement that no invention would be required in adapting the Bates device to stop the operation of the Weber magneto, whenever the exhaust valve operating rod is held to a position to open the exhaust valve, by reason of its control through the speed governor.

We submit at the out-set that while the Examiner's position looks reasonable to one examining the condition of this art at the present time, there is absolutely no evidence to show that with the Bates device before him, any mechanic could produce the device of this Kane application. On the contrary, it is submitted that the evidence is all against the Examiner, because the Weber device of oscillating magneto goes back as early as 1903, for we find his application was filed on February 16 of that year, and the patent was granted as early as May 15, 1906. Then we have not only the Bates patent showing how to cut out the operation of a battery sparking device, as granted on January 18, 1910, but we have the prior art patents preceding Bates, to which we have already referred, namely, the two patents to Quast, and the Stickney, Witry and Olds patents. Yet, with all these prior constructions before designers of ignition devices for explosive engines, no one prior to Kane appears to have found

541428

60

(Endorsed) Jan 29 1919

832

—5—

out it was desirable or showed how to stop the oscillation of the magneto when its current was not needed. As the Supreme Court of the United States said, in the well-known case of *Potts v. Creager*, 155 U. S., 608:

"The apparent simplicity of a new device often leads an inexperienced person to think that it would have occurred to anyone familiar with the subject. But the decisive answer is that with dozens and perhaps hundreds of others laboring in the same field, it had never occurred to anyone before. The practiced eye of an ordinary mechanic may be safely trusted to see what ought to be apparent to everyone."

If the Examiner's contention is true, or is a reasonable hypothesis, then it would seem to follow that Bates having shown how to adapt the device of his patent No. 946,816, to stop the operation of the movable electrode in a sparking device, would at the same time, in view of the prior Weber

patent No. 820,535 showing the oscillating magneto, have given to the world what Kane has produced as the result of great experimentation and effort at a later day.

To apply the Examiner's argument, let us see what a mechanic, having before him the Bates and the Weber devices, could produce in view of what the Examiner thinks is obvious.

Bates shows how to stop the operation of the movable electrode when the exhaust valve operating rod shifts under the control of the speed governor. Now, if we apply this teaching of the Bates patent to the Weber construction, let 541428

61

(Endorsed) Jan 29 1919

833

—6—

us see what the mechanic would produce. The arm 26 of the Weber corresponds to the arm 11 of the movable igniter-electrode of Bates. The oscillating member 13 operates this arm, and the vibrating arm 41 of Weber is the part that co-operates with the electrode arm 26. If, therefore, we make a connection between the exhaust valve operating rod and the electrode operating part 41 of Weber, so that the electrode remains inoperative when the exhaust valve is held open by the action of the speed governor, then we would not have in the Weber device thus modified the equivalent of applicant's device, because, while the movable electrode would remain stationary, the magneto would continue to oscillate, which is the very result that the Kane device is intended to obviate.

But the above is not what applicant has shown. He has provided means for stopping the oscillation of the magneto as well as the movement of the electrode of the make-and-break sparking device, and this is what he claims. Surely, the Examiner's contention that no invention would be required to do what applicant has done is entirely refuted by this record, in which some half dozen or more able designers and inventors were groping with the problem of producing a satisfactory ignition device, and has produced a make-and-break battery igniter, with a cut-out under the control of the governor and the shift of the exhaust valve operating rod, and had produced an oscillating magneto, but had failed to show how to stop the wear and tear on the magneto when

its current was not needed. Perhaps these prior designers
54148 62

(Endorsed) Jan 29 1919

834

—7—

had not, like Kane, discovered how wasteful their devices were in hammering away and producing the ignition sparks when they were not needed. As one court has remarked, it oftentimes takes as fine a degree of discernment to recognize and point out the weak points in a device as it does to provide the necessary means of remedying the same. The applicant Kane ascertained that one of the enemies of the oscillating type of magneto was the construction which necessitated its continuous production of the sparking current whether its services were needed or not. Everyone who has watched the operation of a governor controlled explosive engine knows that particularly when it is running on light loads its governor control causes it to miss a great many explosions, and the Kane invention insures that there will be no wear and tear on the oscillating magneto when the engine is missing these explosions, and the ignition current is not needed. We submit that what Kane has done was unmistakably not pointed out in any of the prior art to which the Examiner has referred, and was certainly not put in such form in the Bates and Weber patents as to make it available for commercial use or the use of the public. We shall presently show that immediately after the Kane device was given to the public it sprang into general favor, and many thousand have been manufactured and sold, and there is an ever widening market for the same wherever gasoline is used for a fuel on the simpler types of engines which are controlled by gov-
541428 63

(Endorsed) Jan 29 1919

835

—8—

errors connected with the exhaust valve operating devices. The Examiner has said that what Kane did does not arise to the dignity of invention, in view of Bates and Weber. We believe that Kane gave to the public a valuable and novel invention, and if measured by the test laid down by the United States Circuit Court of Appeals for the Seventh Circuit, in the case of General Electric Company vs. Sangamo Electric Company, 174 Fed. Rep., at page 251. Kane has made a valuable and patentable improvement. The language of the court, to which we refer, is as follows:—

"Invention, in the nature of improvement, is the double mental act of discerning, in existing machines or processes or articles, some deficiency, and pointing out the means of overcoming it."

What Kane did was to perform the double act here referred to. That is, he discerned there was a deficiency in the common types of oscillating magnetos like that devised by Weber, and the deficiency was that they continued to pound away, wearing themselves out and generating useless current when there was no charge in the cylinder to be exploded. But Kane not only discerned this defect, but went further and pointed out the means of overcoming it. It is true he used parts of the Bates device, but he added the magneto to the combination, so that his completed invention is a decidedly different combination and produces a different result from either Bates or Weber, or from the two devices combined, as we have seen.

It is believed that these claims should be given to the applicant.

(Endorsed) Jan 29 1919

836

—9—

plicant Kane, as he was the first to discover the desirability of stoppage of the oscillation of a magneto under the conditions mentioned, and the first to provide means in connection with a magneto for this purpose. No harm can be perpetrated upon the public by granting these claims to Kane, because it is not shown that prior to his invention anyone had ever made a device of this character. In fact, in all of the art cited by the Examiner, there is not an intimation that anyone prior to Kane had ever perceived of the necessity or desirability which is now so obvious that thousands of these devices are in every-day use, of providing means for stopping the operation of the magneto when it is not needed, because of the governor control of the exhaust valve of the motor or engine.

Bates might have, without very much invention, adapted his device to operate upon a magneto, had he discerned the defect in such existing machines, but Bates was working evidently with battery forms of ignition, and if it had not been for Kane, the world would probably still be without this invention, for there is no intimation that Weber recognized that it was a good thing to stop the operation of the magneto when its effort was not needed, and hence stop its pounding action, and increase its life length, and had he known of the

desirability of this feature in the magneto, there is nothing to show that he knew anything of the Bates device, or that he could have given the Kane invention to the public. Suffice it to say that he was in the field prior to Kane, and even prior

541428 65

(Endorsed) Jan 29 1919

837

—10—

to Bates, and all he gave to the world is embodied in his patent, and it does not anticipate Kane's invention.

Attention is directed to an affidavit of the applicant attached hereto and an affidavit of Maurice Kane corroborating certain facts set forth by applicant regarding the extent of use to which the invention has been put.

The fact that one Company alone had made for it and has sold more than thirty-five (35,000) thousand ignition devices embodying the invention is evidence of its importance and practicability. It is believed that these figures alone, showing the popularity and importance of the invention, conclusively refute the Examiner's contention that, in view of Bates & Weber, there was no invention in devising the ignition mechanism claimed by applicant in the two claims on appeal, and for these reasons applicant submits that this Honorable Board should reverse the Examiner's decision and allow the claims to him.

Respectfully submitted,

BROWN NISSEN & SPRINKLE
Attorneys for Edmund Joseph Kane.

541428 66

(Endorsed) Jan 29 1919

838 IN THE UNITED STATES PATENT OFFICE.

In Re Application of Edmund Joseph Kane, Serial No. 541,428, filed February 2, 1910, Electric Igniters for Explosive Engines. } Before the
Examiners-in-Chief
On Appeal.

State of Illinois, }
County of Cook. } ss.

(Rubber Stamp) Examiner-in-Chief Mar 31 1915 U. S. Patent Office.

EDMUND JOSEPH KANE, being first duly sworn, says:

I am a citizen of the United States, of legal age, and residing at Chicago, in the County of Cook, and State of Illinois, and am the applicant in the above entitled application now on appeal before the Board of Examiners-in-Chief. At the time the invention embodied in the claims on appeal was made by me, I was connected with a Chicago firm manufacturing Ignition Devices for Gasoline Engines, and know, from my personal observation and from investigations I have made that after this invention was perfected by me, just prior to the filing of my application for patent, it was widely adopted for use on the igniters of gasoline engines, and among others, was used to a very great extent by the International Harvester Company. I made investigations from which I have ascertained that upwards of thirty-five thousand (35,000) gasoline engines have been made and sold by the International Harvester Company equipped with the invention embodied in these claims on appeal, and find that the device has in the hands of users given universal satisfaction, and the devices are now for the most part, in so far as I have been able to ascertain, in successful use in the hands of purchasers, and the demand for the invention on gasoline using engines continues.

And further affiant saith not.

EDMUND JOSEPH KANE

Subscribed, and sworn to before me this 25th day of March, A. D. 1915.

WM. C. WRATH.

541428—67

(Endorsed) Jan 29 1919

839

IN THE UNITED STATES PATENT OFFICE.

In Re Application of Edmund Joseph Kane, Serial No. 541,428, filed February 2, 1910, Electric Igniters For Explosive Engines. } Before the Examiner-in-Chief. On Appeal.

State of Illinois, } ss.
County of Cook

MAURICE KANE, being first duly sworn, says:

I am a citizen of the United States, residing at Chicago, in the County of Cook, and State of Illinois; for a number of years, dating back to the date of its organization in 1902, I have been connected with the designing and mechanical engineering corps of the International Harvester Company, and am familiar with the construction and mode of operation of explosive engines. I am familiar with the character of the invention of Edmund Joseph Kane, as embodied in application, Serial Number 541,428, filed February 2, 1910, on Electric Igniters For Explosive Engines, on appeal; I have read and understand the claims on appeal, and have been familiar with the practical working of the device of this Kane patent since it was perfected by the inventor. The manufacture and sale of the device as embodied in these appealed claims was begun by the International Harvester Company, I find, by referring to a decision of the Experimental Department, in the month of August or in the month of September, 1909, the decision in question bearing date of August 30, 1909. I am familiar with the extent to which these devices have been manufactured and sold as embraced in the appealed claims of this application, and can state that the device has been very successful, and has gone into general use on gaso-

541428 68

(Endorsed) Jan 29 1919

840

—2—

line engines sold by the International Harvester Company making use of the oscillating type of magneto. I have supplemented my general knowledge by carefully examining the sales records, and find that upwards of thirty-five thousand (35,000) of these ignition devices embodying the claims of this application on appeal have been, since the autumn of

1909, made and sold by the International Harvester Company, and I know that the same are and have been continuously in successful operation in the hands of purchasers.

And further affiant saith not.

MAURICE KANE

Subscribed and sworn to before me, this Twenty-fifth (25th) day of March, A. D., 1915.

NANCY DILLON

*Notary Public, Cook County,
Illinois.*

541428 69

(Endorsed) Jan 29 1919

841

J.R.S.

Hearing,

Apr. 7, 1915.

Appeal No. 8302.

Appeal No. 8302 Paper No. 19
Decision.

June 26, 1915.

UNITED STATES PATENT OFFICE.

Before the Examiners-in-Chief.

Application of Edmund Joseph Kane for a patent for an improvement in Electric Igniters for Explosive Engines, filed February 2, 1910, Serial No. 541,428.

Messrs. Brown, Nissen & Sprinkle, attorneys for appellant.

The applicant has appealed from the action of the primary examiner finally rejecting the following claims:

1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

2. The combination in an explosive engine having a speed governor, and an exhaust valve operating rod operatively connected with the speed governor, of a magneto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.

The references cited are:

Weber, 820,535, May 15, 1906, ✓

Bates, 946,816, Jan. 18, 1910. ✓

The pertinence of the references is clearly explained in the examiner's statement. We find no error in the position taken there. Anyone applying the rocking magnetos of Weber to the Bates engine would naturally adapt the Bates mechanism to the suspension of the operation of the magneto when the exhaust valve is held open by the governor.

The action of the primary examiner is affirmed.

FAIRFAX BAYARD

F. G. STEWARD

FRANK C. SKINNER

Examiners-in-Chief,

541428 70

(Endorsed) Jan 29 1919

842

Appeal No. 8302 Paper No. 20

Notice of Decision.

202

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

(Rubber Stamp) Examiner-in-Chief June 26 1916 U. S.
Patent Office.

Sir:

Inclosed find copy of decision this day rendered by the
Examiners in Chief in the ^{ex parte} **(interference)* case of Edmund
Joseph Kane, Serial No. 541,428.

By direction of the Commissioner:

Very respectfully,

W. F. WOOLARD

Chief Clerk.

Messrs. Brown, Nissen & Sprinkle, Attys.,
1124 Monadnock Block,
Chicago, Ill.

541428 71

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

(Rubber Stamp) U. S. Patent Office, Jan 21 1916 Division XXVIII

IN THE UNITED STATES PATENT OFFICE.

In re Application of Edmund Joseph Kane S. No. 541,428 Filed Feb. 2, 1910	}	Igniters For Explosive Engines.
--	---	------------------------------------

To the Commissioners of Patents:

Sir:

In the above entitled case please permit Edward E. Clement, Washington, D. C. to have access to the file of the case until February first, nineteen sixteen, after which this power to inspect shall become void, unless extended.

Very respectfully,

BROWN, NISSEN & SPRINKLE

By ARTHUR L. SPRINKLE

Attorneys for E. J. Kane.

Washington, D. C.

Jan 21, 1916.

541428 72

(Endorsed) Jan 29 1919

(Rubber stamp) Docket Clerk Apr 25 1916 U. S. Patent Office

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane	Case
Invention—Electric Igniters for Explosive Engines.	Div 28
Serial No.—541,428	Filed February 2, 1910.

Chicago, April 20, 1916.

Hon Commissioner of Patents,
Washington, D. C.

Sir:

I, Edmund Joseph Kane, of Chicago, in the County of Cook and State of Illinois, do hereby revoke all powers of attorney heretofore executed by me and do hereby appoint Lynn A. Williams and Clifford C. Bradbury, of the co-partnership of Williams and Bradbury (Reg. No. 10,473), 720

Monadnock Block, Chicago, Illinois, my attorneys, with full power of revocation and substitution, to prosecute my application for United States Letters Patent Serial No. 541,428, filed February 2, 1910, for an improvement in Electric Igniters for Explosive Engines, to make alterations and amendments therein, to receive the patent and transact all business in the Patent Office connected therewith.

Signed at Chicago, in the County of Cook and State of Illinois, this 20th day of April, A. D. 1916.

EDMUND JOSEPH KANE

(Rubber stamp) Accepted May 1 1916 Accepted R. F. Whithed Assistant Commissioner.

(Documentary 25c Internal Revenue stamp.)

541428—73

(Endorsed) Jan 29 1919

845 48

EEG

2—069

23

Address Only

The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR

United States Patent Office,

Washington, D. C.

May 2, 1916

You are hereby informed that Your Power of Attorney Has
Revoked
Been * (*Accepted*) in the matter of the application of Edmund Joseph Kane for Letters Patent for an Improvement in Electric Igniters for Explosive Engines No. 541,428 Filed Feb. 2, 1910

Very respectfully,

THOMAS EWING,
Commissioner.

Brown, Nissen & Sprinkle
1124 Monadnock Block
Chicago, Ill.

541428—74

(Endorsed Jan 29 1919)

*Matter in italics in parentheses, stricken out in original transcript.

570

Defendants' Exhibit No. 54.

846 48½

EEG

Serial No. 541428 Paper No. * (22)²³
2—069

Address Only
The Commissioner of Patents,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, D. C.

May 2, 1916

You are hereby informed that Your Power of Attorney Has
Been * (*Rejected*) in the matter of the application of Edmund
Accepted

Joseph Kane for Letters Patent for an Improvement in Elec-
tric Igniters for Explosive Engines No. 541,428 Filed Feb. 2,
1910

Very respectfully,

THOMAS EWING,
Commissioner.

Williams and Bradbury
720 Monadnock Block
Chicago, Ill.

541428 75

(Endorsed) (Jan 29 1919)

*Matter in italics in parentheses, stricken out in original transcript.

847 (Rubber stamp) Docket Clerk June 26 1916, U. S. Patent Office \$20 Rec'd Jun 26 1916 C. C. U. S. Patent Office.
Serial No. 541,428 Paper No. 24
Dec

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane	Case 1.
Invention—Electric Igniters for	Room 63
Explosive Engines	Div. 28
Serial No.—541,428	Filed February 2, 1910.
(In left-hand margin) H by—E B.	

1315 Monadnock Block,
Chicago, Ill., June 23, 1916.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

I hereby appeal to the Commissioner in person from the decision of the Examiners in Chief in the matter of my application for Letters Patent for an improvement in Electric Igniters for explosive engines filed February 2, 1910, Serial No. 541,428. The following are assigned as reasons of appeal:

1. The Examiners in Chief erred in holding that the references of record anticipate the applicant's claims.
2. The Examiners in Chief erred in affirming the action of the Primary Examiner finally rejecting the claims on the reference Bates in view of the reference Weber of record.
3. The Examiners in Chief erred in not reversing the action of the Primary Examiner finally rejecting the claims on the references of record.

An oral hearing is requested.

Respectfully submitted,

EDMUND JOSEPH KANE,

By WILLIAMS & BRADBURY

LYNN A. WILLIAMS,

Attorneys.

Check for \$20.00 to
cover appeal fee is
sent herewith.

541428 76

(Endorsed) Jan 29 1919

848 EEG

2—201

Address Only
The Commissioner of Patents,
Washington, D. C.

Paper No. 25

DEPARTMENT OF THE INTERIOR,
United States Patent Office
Washington

Sir:

July 1, 1916

The case of Edmund J. Kane, }
Electric Igniters for } Appeal to Commissioner.
Explosive Engines. }

Serial

Commissioner

*(*Intf.*) No. 541,428, will be heard by the *(*Examiner in Chief*)
on the 19th day of July, 1916.

ten

The hearings will commence at *(*one*) o'clock, and as soon
as the argument in one case is concluded the succeeding case
will be taken up.

If any party, or his attorney, shall not appear when the
case is called, his right to an oral hearing will be regarded
as waived.

The time allowed for arguments is as follows:

Ex parte cases, thirty minutes;

Motions, thirty minutes, each side;

Interference appeals, final hearing, one hour each side.

By special leave, obtained before the argument is com-
menced, the time may be extended.

The appellant shall have the right to open and conclude in
interference cases, and in such cases a full and fair opening
must be made.

Briefs in interference appeals must be filed in accordance
with the provisions of Rule 147.

Respectfully,

THOMAS EWING,

.. Commissioner of Patents.

To Williams and Bradbury
720 Monadnock Block
Chicago, Ill.

541428 77

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

849

Serial No. 541,428 Paper No. 25
(Rubber stamps) Docket Clerk July 12 1916 U. S.
Patent Office U. S. Patent Office, Jul 14 1916 Division
XXVIII. U. S. Patent Office, Jul 14 1916 Division XXVIII.
Approved Jul 12 1916 Thomas Ewing Commissioner of Pat-
ents.

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane
Invention—Electric Igniters for
Explosive Engines

Case 1.
Room 63
Div. 28

Serial No.—541,428

Filed February 2, 1910.

Petition to the Honorable Commissioner of Patents.

Sir:

Your petitioner respectfully requests your Honor to re-
mand this application to the Primary Examiner directing the
Primary Examiner to reconsider this application and the
claims therein in view of recent developments and the con-
tents of the accompanying affidavit of Walter Brown.

Applicant has just taken an appeal from a decision of the
Examiners in Chief affirming the action of the Primary Ex-
aminer finally rejecting the two claims in the application
upon the references of record. This petition is based upon
the following grounds, to-wit:

The holdings of the Primary Examiner and Examiners in
Chief, from which appeal has been taken, have been to the
effect that at the time of the Kane invention it was within the
skill of the art to have combined the references of record, to-
wit: Bates patent No. 946,816 and Weber patent No. 820,535,
in such a way as to anticipate the subject matter of the re-
jected claims. The Office has never contended that either of
the reference patents taken alone anticipates the claims on
appeal and the sole question involved has been one of inven-
tion. The position of the Office has been that one skilled in
541428 78

(Endorsed) Jan 29 1919

850 the art to which the Kane invention relates would natur-
ally and without the exercise of invention combine the
Bates mechanism with a prior art magneto, such as shown in
the Weber patent, to produce that which applicant claims is
his invention. The position of the applicant has been that

f
s
r
n
e
e
y
s
r
it

one exercising the skill of the art as it existed prior to Mr. Kane's invention and following the recognized practice of the art would, if he endeavored to combine the prior art devices, place them in an arrangement not embodying the applicant's invention nor responding to the terms of applicant's claims.

Neither the Primary Examiner nor the Examiners in Chief at the time their respective actions were taken had before them anything going to show what the skill of the art would have produced in an attempt to operate a magneto in combination with the mechanism of the Bates patent. The lower tribunals, having no concrete thing before them showing, or tending to show, what could and would naturally be produced by the mere skill of the art in attempting to combine Bates with magnetos of the prior art, quite naturally jumped to the conclusion that Bates and Weber would naturally be combined to produce a structure anticipating applicant's claims and that, therefore, invention was not required to produce the combinations set forth in applicant's claims.

Within the last few days applicant's attorneys have learned that a prominent manufacturer of gasoline engines has produced and sold large numbers of engines not embodying the applicant's invention but comprising ignition systems wherein the Bates invention is employed in conjunction with a magneto in just the arrangement which we contend would naturally be provided by one skilled in the art if he should attempt to combine the devices of the art prior to Kane in one installa-

541428 79

—2—

(Endorsed) Jan 29 1919

851 tion. The accompanying affidavit of Mr. Walter Brown identifies the arrangement we have referred to and points out the reasons why one skilled in the art and not exercising invention would and did produce the arrangement employed by the manufacturer referred to and why one possessing the skill of the art but not exercising invention would not naturally combine the devices of the prior art in the arrangement called for by the claims in applicant's application.

It is respectfully submitted that the Primary Examiner should have the benefit of knowing what the skill of the art has produced along the lines of applicant's invention in deciding the difficult question as to whether or not the applicant in providing his admittedly new combination exercises invention or merely what may be regarded as the skill of the art

as it existed at the time Mr. Kane made his invention. Therefore, the applicant requests that the Honorable Commissioner hold in abeyance the appeal from the Examiners in Chief and remand this application to the Primary Examiner with instructions to reconsider and act upon this application in the light of the new matter now at hand.

Respectfully submitted,

EDMUND JOSEPH KANE,

By WILLIAMS & BRADBURY

Attorneys.

1315 Monadnock Block, Chicago, Ill.,

June 23, 1916.

541428 80

—3—

(Endorsed) Jan 29, 1919

852 (Rubber stamp) Docket Clerk Jul 12 1916 U. S.
Patent Office.

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane

Invention—Electric Igniters for Explosive Engines

Serial No.—541,428

Filed February 2, 1910.

AFFIDAVIT OF WALTER BROWN.

State of Wisconsin }
County of Racine } ss:

WALTER BROWN, being first duly sworn, on oath deposes and says:

I am a citizen of the United States, a resident of Racine, Wisconsin, and the Vice-President and General Manager of the Webster Electric Company, which company has for its principal business the manufacture and sale of magnetos for internal combustion engine ignition. I am, and have been continuously for many years last past, in close touch with the trade in internal combustion engines of the type wherein make and break or low tension ignition is or may be conveniently employed. This class of engines, generally speaking, includes large and small stationary engines, farm engines, tractor engines, etc. For many years last past I have made it a point

to keep myself familiar with the construction, operation, and equipment of different makes of engines of the class mentioned as they have been placed upon the market from time to time.

I fully understand the construction and mode of operation of the mechanism disclosed in the above entitled application of Edmund Joseph Kane and have examined and understand the construction and operation of the mechanisms disclosed in the Bates and Weber patents upon which the Primary Exam-
541428 81

(Endorsed) Jan 29 1919

853 iner rejected the two claims in Mr. Kane's application.

I am informed that the Examiner rejected the claims in Mr. Kane's application not on the theory that either of these patents in and of itself anticipates what Mr. Kane claims is his invention, but rather upon the theory that it would be the natural thing for one skilled in the art of internal combustion engine ignition to place a magneto, say of the type shown in the Weber patent, in combination with the device shown in the Bates patent to produce a structure involving the subject matter of the claims in Mr. Kane's application.

The invention of the Bates patent is, in my opinion, a meritorious one and has recently been used to a considerable extent upon hit and miss engines. Bates undoubtedly contemplated using battery current in connection with his mechanism as no magneto is shown in the Bates drawing nor mentioned in his specification. At the time of the Bates invention the common practice was to utilize battery current in connection with the make and break electrodes of the type illustrated by Mr. Bates.

The Weber patent is, in my opinion, a mere paper patent as devices constructed in accordance with the Weber disclosure have never appeared upon the market to my knowledge. Although application for the Weber patent, which shows what may be called an oscillating magneto, appears to have been made in 1903 none of the Weber devices so far as I know was ever used commercially and it was not until seven or eight years later, after the Webster Electric Company had placed upon the market devices embodying the inventions disclosed in Mr. Kane's patent application that the engine trade became familiar with and began to use oscillating low tension magnetos. The shortcomings of the Weber device which undoubtedly prevented it from coming into commercial use are prob-

ably not important so far as the questions herein involved
541428 82 —2—

(Endorsed) Jan 29 1919

854 are concerned and, therefore, will not be referred to in detail by me.

I have been asked to express my opinion as to whether or not at the time Mr. Kane's application was filed, to-wit: February 2, 1910, it would have been within the skill of the art to have combined a magneto with the Bates arrangement to accomplish the object of Mr. Kane's invention which, as I understand it, is that the magneto operating means shall be rendered inoperative whenever the engine exceeds a pre-determined speed. Mr. Kane in his application shows and describes means operated by the exhaust valve actuating rod for rendering the magneto operating means inoperative during non-firing periods in the operation of a hit and miss engine.

In my opinion it required more than the mere skill of an expert in gas engine ignition to produce Mr. Kane's combination, the disclosures of the Bates and Weber patents notwithstanding. This opinion is based not only upon the fact that prior to Mr. Kane's invention no one had ever produced the combination called for by the claims in Mr. Kane's application, but upon what I consider to be of even greater importance, that is, the fact that if Mr. Kane had followed the teachings and recognized practice of the art as it existed at the time his application was filed he would not have arranged his mechanism as he did. In the art as it existed prior to Mr. Kane's invention when magnetos were used for ignition purposes the practice was to have the magneto at all times driven from the engine shaft so that the magneto operated at all speeds of the engine, there being no provision made for permitting the operation of the magneto to cease during non-firing periods in the running of the engine. The magneto of the Weber patent was and is intended to operate each time the piston in the cylinder of the associated engine reaches
541428 83 —3—

(Endorsed) Jan 29 1919

855 its firing position and there is no means shown or suggested in the Weber patent for interrupting the operation of the magneto during non-firing periods in the running of a hit and miss engine.

Inasmuch as the recognized best practice of the art as it existed prior to Mr. Kane's invention was to operate the magneto continuously and without regard to engine speed, and inasmuch as there was nothing in the art to teach otherwise, it seems logical to suppose that a person exercising the skill of the art and not resorting to invention would follow the teachings and best practice of the art and use a constantly driven magneto if he desired to use the mechanism of the Bates patent in combination with a magneto. This conclusion is supported by the fact that a leading manufacturer of high grade stationary engines working independently of Mr. Kane, and, so far as I know, in ignorance of Mr. Kane's activities has produced and placed upon the market stationary engines embodying the Bates arrangement in combination with a magneto—a magneto at all times operatively connected with the engine and arranged to operate regardless of whether or not the igniter electrodes are operating. In other words, this engine manufacturer has followed the teachings of the art as it existed prior to Mr. Kane's invention and, therefore, instead of producing Mr. Kane's combination wherein both the igniter electrodes and the magneto are put out of commission when the engine overspeeds this manufacturer has provided an arrangement wherein the igniter electrodes only are temporarily put out of commission when the engine overspeeds, the magneto being kept running regardless of the speed of the engine and regardless of whether or not the igniter electrodes are in or out of commission.

The engine manufacturer to which I have referred is
541428 84 —4—

(Endorsed) Jan 29 1919

856 the Termaat & Monahan Company of Oshkosh, Wisconsin, Attached hereto and marked "T. & M. Catalogue—Brown Affidavit" is a catalogue which was distributed to the trade by the Termaat & Monahan Company some years ago and which illustrates the type of engine to which I have referred and which have been placed upon the market in considerable numbers by the Termaat & Monahan Company. Although this catalogue contains some thirty-two pages, on a good many of which are illustrated different styles of hit and miss engines embodying the arrangement to which I have referred, I shall refer particularly to the engines illustrated on pages eight, nine, and ten of the catalogue. I have applied the same

reference numerals to corresponding parts of the engines shown on pages eight, nine, and ten. On pages eight, nine, and ten A indicates the make and break electrodes which are cyclically operated, as in the Bates patent, by a reciprocating rod B. At C is the operating rod for the engine exhaust valve which is normally cyclically operated by a cam D to effect the proper actuation of the exhaust valve, but which is connected with governor mechanism so that the exhaust valve is held open when the engine overspeeds. At E is a collar on the exhaust valve operating rod which co-operates with a rocker or bell crank arm F co-operating with the igniter operating rod B to prevent actuation of the make and break electrodes whenever the exhaust valve is held open. The parts thus far described are not essentially different from the mechanism disclosed in the Bates patent and operate in the same manner to secure the same result. Operating with the cam D, which effects the operation of the exhaust valve operating rod C, is a spur gear G permanently geared to the engine crank shaft and through which movement is transmitted to a pinion H fixed upon the shaft of a magneto I. It will thus be seen that the magneto I is permanently geared

541428 85

—5—

(Endorsed) Jan 29 1919

857 to the engine crank shaft and is continuously operated whenever the engine is running and regardless of whether or not the governor devices are operating to hold the exhaust valve in open position, and regardless of whether or not the rocker or bell crank arm F is in such position as to prevent the reciprocating rod B from effecting the operation of the make and break electrodes A.

I believe that the arrangement illustrated in the Termaat & Monahan Company's catalogue, and which I have just briefly described, is what might reasonably be expected if one skilled in the art of internal combustion engine ignition as it existed at the time of the Kane invention were given the Bates patent and told to combine with it any magneto of the prior art, it being borne in mind that the prior art magnetos, the Weber device included, were provided with no means for

temporarily putting them out of commission during the non-firing periods in the operation of a hit and miss engine.

And further affiant sayeth not.

WALTER BROWN

Subscribed and sworn to before me this 23rd day of June,
A. D. 1916.

JAMES N. BOUR,
Notary Public.

My commission expires March 23, 1919
541428 86

T & M. Catalog. Shown Aff. 105

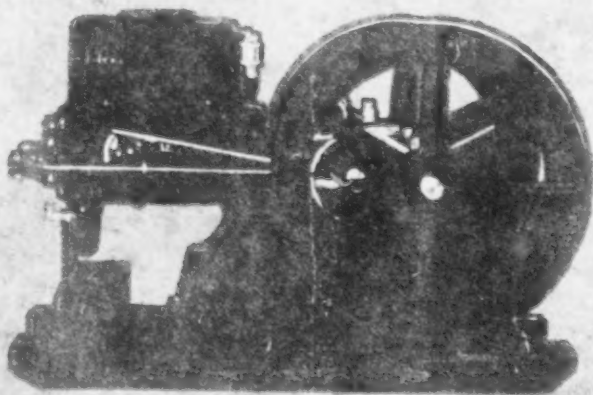


STATIONARY ENGINES

DOCKET CLERK

JUL 12 1916

U. S. PATENT OFFICE

T & M QUALITY

CATALOG No 21

TERMAAT & MONAHAN CO.
BRANSON, MO. U.S.A.



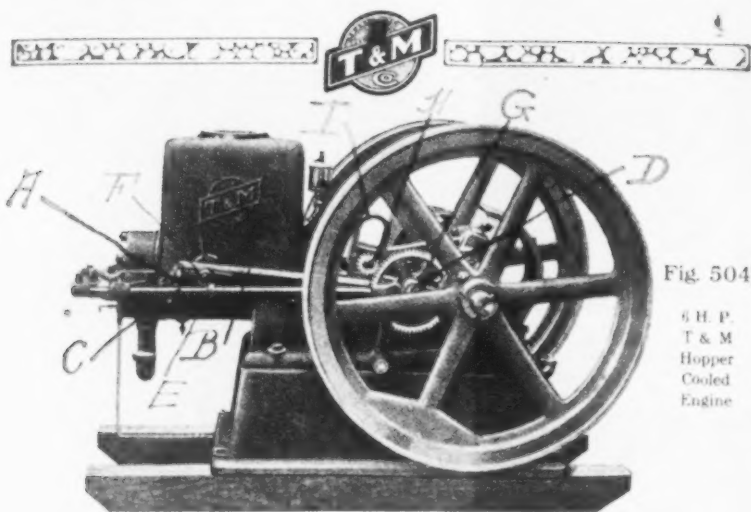


Fig. 504

6 H. P.
T & M
Hopper
Cooled
Engine

Specifications

Cylinder: Cast with upper part of base.
Speed: 325 revolutions per minute normal.
Net weight: 1200 lbs. Gross weight packed for Export: 1500 lbs.
Cubic measurement packed for Export: 60 cubic feet.
Flywheel: 32 inches diameter.
Weight of each flywheel: 210 lbs.
Crank shaft: 2 inches diameter.
Bearings: Best grade copper hardened babbitt.
Piston: 4 snap rings and oil grooves.
Connecting rod: Steel, babbitted and bushed.
Ignition: Make and break, adjustable.
Gears: All machine cut.
Governor: Hit and miss type, adjustable.
Floor space: 36x58 inches. Height: 36 inches.
Pulley: 12x10 inches.
Fuel Tank capacity: 8 gallons. Hopper capacity: 8 gallons.
Color: T & M green.
Equipment: Includes muffler, fuel tank, batteries, coil, switch, skids, spark plug, oil and grease cups, wrenches, oil can, and complete instructions for operating.

Parts not Included, but Supplied Extra when Ordered

Friction clutch, gasoline reservoir, magneto, kerosene and gas attachment, compression plates for different altitudes. FOR PRICES SEE PRICE LIST.

Termaast & Monahan Co.

Philadelphia, March 17, 1913.

Gentlemen:—Received engine purchased of your agent, and would say it is a great engine. You can't beat it.

Yours truly, H. HARFMAN,

8

941427

96



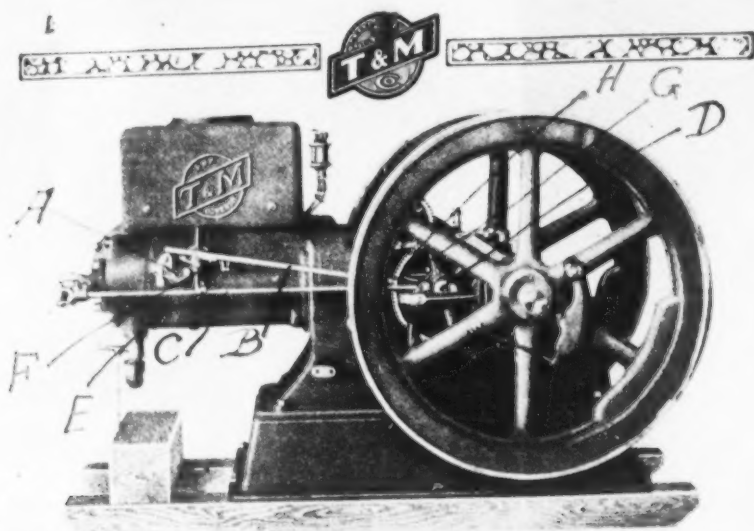


Fig. 505 9 H. P. T & M Hopper Cooled Engine

Specifications

Cylinder: Cast separate from base.
 Speed: 275 revolutions per minute normal.
 Net weight: 2000 lbs. Gross weight packed for Export: 2400 lbs.
 Cubic measurement packed for Export: 90 cubic feet.
 Flywheel: 37 inches diameter.
 Weight of each flywheel: 335 lbs.
 Crank shaft: 2 $\frac{1}{2}$ inches diameter.
 Bearings: Best grade copper hardened babbitt.
 Piston: 4 snap rings and oil grooves.
 Connecting rod: Steel, brass end and bushed.
 Ignition: Make and break, adjustable.
 Gears: All machine cut. Governor: Hit and miss, adjustable.
 Floor space: 40x68 inches. Height: 45 inches.
 Pulley: 16x10 inches, straight face.
 Fuel Tank capacity: 11 gallons. Hopper capacity: 14 gallons.
 Color: T & M green.
 Equipment: Includes muffler, fuel tank, batteries, coil, switch, skids, spark plug, oil and grease cups, wrenches, oil can and complete instructions for operating.

Parts not Included, but Supplied Extra when Ordered

Friction clutch, magnets, kerosene and gas attachment, compression plates for different altitudes, and fuel pump. FOR PRICES SEE PRICE LIST.

You will perhaps recall me to memory when referred to the sale of one of the T & M engines, which you sold to my father, M. C. Hansen, some time ago. I assure you that you have given us a perfectly satisfactory engine, and the interest that you have shown after the sale as well as before, has made of my father a staunch supporter of the T & M engines.

Very respectfully, ALFRED C. HANSEN, Florence, Nebr.



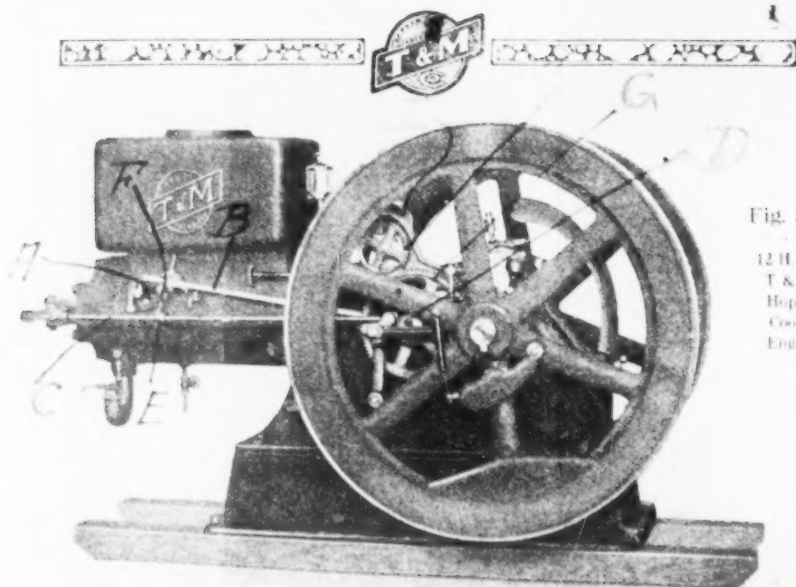


Fig. 506

12 H. P.
T & M
Hopper
Cooled
Engine

Specifications

Cylinder: Cast separate from base.
Speed: 260 revolutions per minute.
Net weight: 2400 lbs. Gross weight packed for Export: 3000 lbs.
Cubic measurement packed for Export: 110 cubic feet.
Flywheel: 40 inches diameter.
Weight of each flywheel: 430 lbs.
Crank shaft: 2 1/2 inches diameter.
Bearing: Best copper hardened babbitt.
Piston: 4 snap rings and oil grooves.
Connecting rod: Steel, brass end and bushed.
Ignition: Make and break, adjustable.
Gears: All machine cut. Governor: Hit and miss, adjustable.
Floor space: 42x72 inches. Height: 48 inches.
Pulley: 18x10 inches, straight face.
Fuel Tank capacity: 15 gallons. Hopper capacity: 16 gallons.
Equipment: Includes muffler, fuel tank, batteries, coil, switch, skids, spark plug, oil and grease cups, wrenches, oil can and complete instructions for operating.

Parts not Included, but Supplied Extra when Ordered

Friction clutch, magneto, kerosene or illuminating gas attachment, compression plates for different altitudes, and fuel pump. FOR PRICES SEE PRICE LIST.

862

2—603

Letter No. 28

Address only
The Commissioner of Patents
Washington, D. C.

EEG

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

July 13, 1916.

In the matter of the
Application of
Edmund Joseph Kane,
Electric Igniters for
Explosive Engines;
Filed Feb. 2, 1910,
Serial No. 541,428.

} On Appeal to the Commissioner
(Petition to remand to the
Examiner.)

Sir:

You are hereby informed that the above petition has been
approved by the Commissioner.

By direction of the Commissioner:

Very respectfully,

W. F. WOOLARD
Chief Clerk.
J.

Edmund Joseph Kane,
c/o Williams & Bradbury
720 Monadnock Block
Chicago, Ill.

541428 122

(Endorsed) Jan 29 1919

863 Div. 28 Room 63

2-260

Paper No. 29

21

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name. All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

RYH

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

July 17, 1916.

(Rubber Stamp) U. S. Patent Office July 17 1916 Mailed.
Williams & Bradbury,
720 Monadnock Block,
Chicago, Ill.

Please find below a communication from the Examiner in charge of the application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

THOMAS EWING
Commissioner of Patent.

Since the applicant's position has been approved by the Commissioner, this application is taken up for reconsideration by the examiner.

Applicant's remarks in his petition and Brown's affidavit have been given due consideration, but the examiner is still of the opinion that the claims are not patentable.

The position of the office is not, as inferred from applicant's remarks, that everyone who wished to use a governor controlled igniter would combine the Bates and Weber devices in the same manner that applicant has done, but the examiner's position is that the Bates and Weber devices may be combined in the manner defined by the claims without invention. When the Weber and Bates devices are combined in the manner defined by the rejected claims, no new combination, result or effect is produced. The combination is still the same as in the Bates patent, differing therefrom only in that the well known ignition means of Weber has been

substituted for the well known means of Bates, and all the parts continue to perform their usual functions and no more.

The Brown affidavit and accompanying exhibit merely show that the Termaat & Monahan Company has developed a

541428 123

(Endorsed) Jan 29 1919

864

—2—

22

(Kane, 541,482).
device different from applicant's. They in no way relate to the patentability of applicant's device or show that what applicant has done involves invention. Brown appears to have arrived at the conclusion that applicant's device is patentable because the T. & M. Co. device is different therefrom and hence not patentable itself. It seems just as reasonable to conclude that the T. & M. Co. device is patentable because applicant's device differs therefrom, and hence that applicant's device is not patentable. However, it is not seen that there is any relation between the T. & M. Co. device and the patentability of applicant's claims.

The claims are again rejected on the Bates patent, modified in view of the Weber patent, for the reasons stated in the office action of April 22, 1913 and the examiner's statement of Feb. 27, 1915.

BENSON
Examiner.

HJS

541428 124

(Endorsed) Jan 29 1919

(Rubber Stamps) Mail Room Jul 16 1916 U. S. Patent
Office. U. S. Patent Office, Jul 21 1916 Division XXVIII.

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane
Invention—Electric Igniters for
Explosive Engines
Serial No.—541,428

Case 1.
Room 63
Div. 28
Filed February 2, 1910.

1315 Monadnock Block,
Chicago, Ill., July 18, 1916.

(Written in left-hand margin and canceled) Not entered.
Hon. Commissioner of Patents,
Washington, D. C.

Sir:

In the matter of the above entitled application and pursuant to the Commissioner's decision of July 13th on applicant's petition to remand this application to the Primary Examiner, applicant amends as follows:

Cancel the two claims now in the application and substitute the following claims therefor:

G¹ 3 * (1.) In combination with an internal combustion engine, a speed governor associated with the engine and operatively connected therewith, ignition mechanism for said engine comprising make and break spark electrodes and a magneto, means operated by the engine for effecting the operation of both the magneto and spark electrodes in timed relation one to the other, and mechanism controlled by said speed governor for rendering said engine operated means incapable of effecting the operation of the magneto and spark electrodes whenever the engine passes or exceeds a certain predetermined speed.

541428

125

(Endorsed) Jan 29 1919

| 4 * (2.) An internal combustion engine of the hit and

*Matter in italics in parentheses, stricken out in original transcript.

miss type having an exhaust valve, an exhaust valve operating rod and a speed governor in operative relation to said exhaust valve operating rod arranged to shift the latter to hold the exhaust valve in open position whenever the engine exceeds a certain predetermined speed, in combination with an igniter comprising make and break electrodes, a magneto for supplying ignition current to said igniter, a reciprocating push rod driven by the engine for effecting actuation of the magneto and igniter electrodes together with means operated by the exhaust valve operating rod for rendering the reciprocating push rod incapable of actuating the magneto and igniter electrodes whenever, when the engine exceeds a certain predetermined speed, the exhaust valve operating rod and the governor co-operate to hold the exhaust valve in open position, as aforesaid.

5 *(3.) In combination with an internal combustion engine, a speed governor driven from the engine, ignition mechanism for said engine comprising an igniter and a magneto for supplying ignition current to said igniter, actuating mechanism driven by the engine for effecting the operation of the magneto, and devices controlled by the speed governor for rendering said actuating mechanism incapable of effecting the operation of the magneto whenever the engine passes or exceeds a certain predetermined speed.

(Sigs.)

(Not legible)

Note:

His Honor, Commissioner Ewing, has remanded this application to the Primary Examiner for reconsideration in view of certain developments in the art which have not been

541428

126

—2—

(Endorsed) Jan 29 1919

867

3051

considered by the Primary Examiner heretofore and which, it would seem, controvert the proposition that applicant's invention is but an obvious combination of the Bates and Weber patents of record. The affidavit of Mr. Walter

*Matter in italics in parentheses, stricken out in original transcript.

Brown sets forth facts which we urge clearly indicate that applicant's particular combination—the combination of the claims—would not naturally be produced by one skilled in the art even though he be fully cognizant of the teachings of the Bates and Weber patents. Mr. Brown's affidavit does go to show that when confronted with the same proposition that this applicant faced when he made his invention, to-wit: the use of a magneto with what we may call the "Bates arrangement" a prominent engine manufacturer, following the teachings and best practices of the art, produced a combination not embodying that which this applicant claims as his invention.

As we shall presently point out in more detail, there are at present in commercial use two forms of apparatus wherein a magneto has been used in the "Bates arrangement." One of these forms of apparatus is that of the manufacturer to whom we have referred, and the other is the apparatus invented by this applicant. We believe that on reconsideration the Examiner will come to the conclusion that of the two forms of apparatus wherein the magneto is utilized in the "Bates arrangement" one skilled in the art and following the best practices of the art would naturally adopt an apparatus similar to that of the engine manufacturer referred to. In other words, it is our position that the particular arrangement which we are claiming for this applicant is one which would not naturally be produced by one skilled in the art because the best practice of the art would naturally lead to the production of an arrangement such as that produced by

541428
127

—3—

(Endorsed) Jan 29 1919

868

3052

the engine manufacturer referred to—an arrangement not embodying applicant's particular combination and not affording the particular advantages which are afforded by applicant's particular combination alone.

The foregoing claims have been substituted for those previously in the application because we believe that they more clearly recite the structure and combination of parts which was new with this applicant and which are responsible for the marked success with which applicant's arrangement has met commercially.

Briefly, the Bates patent discloses a hit and miss engine

of the type wherein a speed governor operates through an exhaust valve rod to hold the exhaust valve open and thus to prevent an explosion within the engine cylinder whenever the engine exceeds a predetermined speed. Bates shows make and break electrodes for use with battery current and for operating the movable electrode he provides a reciprocating push rod, generally similar to that employed by this applicant. The reciprocating push rod which operates the movable electrode rides on a roller carried by a rocker or lever and the exhaust valve operating rod is provided with a pin or abutment arranged to engage the rocker or lever and shift the reciprocating rod to such a position that it does not operate the movable electrode, when, during overspeeding, the exhaust valve is being held open by the engine governor. Thus, Bates renders the spark electrodes inoperative when the engine is missing. Bates makes no mention of a magneto and his arrangement was clearly intended to be used with battery current alone. We are free to admit that the Bates patent discloses an operative and meritorious invention and one which has recently gone into wide commercial use, as pointed out in Mr. Walter Brown's affidavit. It 541428

128

—4—

(Endorsed) Jan 29 1919

869

3053

is our position, however, that this applicant has exercised invention by placing a magneto in the Bates arrangement in a particular manner whereby this applicant has secured a new and highly desirable result certainly not contemplated by Bates, as he discloses no magneto, and a result which has never been attained before when a magneto was used.

The Weber patent discloses an oscillating magneto with which is associated make and break electrodes. Weber also discloses a reciprocating rod for effecting the operation of the oscillating magneto and the magneto is designed to separate the spark electrodes to create a spark when the magneto is operated. It is of interest to note, as is pointed out by Mr. Brown in his affidavit, that although the application for the Weber patent was filed in 1903 and the patent issued in 1906 oscillating magnetos never came into commercial use until they were perfected and placed upon the market by the Webster Electric Company, Mr. Kane's assignee. The

Weber patent is, therefore, undoubtedly nothing but a paper patent, but, be that as it may, the important thing to be borne in mind is the fact that the Weber device was intended to be continuously operating in the sense that the magneto is actuated every time the piston in the associated engine reaches the end of its compression stroke. The Weber patent makes no provision for cutting out the magneto during overspeeding or non-firing periods of engine operation.

We believe the Examiner will be free to admit that neither Bates nor Weber taken alone anticipates applicant's claims. It is clear that the Weber patent discloses nothing for

—5—

541428 129

(Endorsed) Jan 29 1919

870

3054

rendering the magneto inoperative during overspeeding or non-firing periods of engine operation. Moreover, we know of no patent which discloses any arrangement wherein a magneto is cut out of operation during overspeeding or non-firing periods of engine operation. We assume that there is no such patent because none has been cited by the Examiner and certainly when magnetos were used the recognized practice in the art as it existed at the time of applicant's invention was to drive the magneto from the engine so that the magneto operated to generate a current each time the piston in the engine cylinder reached the end of its compression stroke. It is true that at the time of applicant's invention rotary magnetos only were in general commercial use. Weber, although his magneto was an oscillator as distinguished from a rotating magneto, had no idea that his magneto might or should be cut out of operation during non-firing or overspeeding periods of engine operation.

Regardless of whether or not the Weber patent was known in the art prior to the date of applicant's invention, it seems to us that any one skilled in the art desiring to place a magneto in the "Bates arrangement" would naturally adopt a continuously operating magneto, or, in other words, a magneto which operated to produce an impulse for every time the piston in the engine cylinder reached the end of its compression stroke. We say one skilled in the art would do this because that is the only kind of magneto that was known in the art prior to the date of applicant's invention. All the rotary magnetos of the prior art are admittedly continuously

operating and the magneto of the Weber patent is continuously operating in the sense that it is operated to generate a current each time the piston in the cylinder of the associated engine reaches the end of its compression stroke.

—6—

541428 130

(Endorsed) Jan 29 1919

871

3055

We believe that our contention that one skilled in the art in attempting to place a magneto in the "Bates arrangement" would adopt a continuously operating magneto is borne out by the fact that the Termaat & Monahan Company, of Oshkosh, Wisconsin, a large manufacturer of gas engines, has adopted such an arrangement, as is fully pointed out in the affidavit of Mr. Walter Brown and as is illustrated in the Termaat & Monahan catalogue which forms a part of the Brown affidavit. The Termaat & Monahan Company we urge did just what might be expected from one skilled in the art. They adapted a continuously operating magneto to the Bates arrangement and therefore attained the object of the Bates invention, but did not attain the object of applicant's invention.

We respectfully submit that this applicant, when he placed a magneto in the Bates arrangement in such a way that the magneto, as well as the make and break electrodes, is automatically cut out of operation during nonfiring or overspeeding periods of engine operation, departed from the teachings and recognized practice of the art and exercised invention. Had this applicant gone no further than have Termaat & Monahan there might be a serious question as to whether or not he had exercised invention because in the Termaat & Monahan arrangement it is only the wear and tear on the electrodes that is obviated during overspeeding periods and the magneto goes right on operating regardless of whether or not the exhaust valve is open. This applicant, by a new combination, has placed a magneto in the "Bates arrangement" in such a way that when overspeeding occurs the wear and tear on the magneto, as well as wear and tear on the electrodes, is eliminated. We submit that this result is highly

—7—

541428 131

(Endorsed) Filed Jan 29, 1919

872

3056

desirable and that, therefore, applicant's combination possessed great utility. We also urge that in providing a magneto that is cut out of operation during overspeeding this applicant exercised invention because had he followed the practice of the art and done that which one skilled in the art would naturally do he would have used a continuously operating magneto, the only kind known in the art prior to his invention, and thus would have arrived at some combination analogous to that of Termaat & Monahan rather than a combination such as is called for by the claims in this application.

As we have pointed out the magneto of Weber is continuously operating and all of the magnetos of the prior art were continuously operating. Therefore, it is logical to assume that Bates or any one else prior to this applicant desiring to use a magneto in the "Bates arrangement" would have employed a continuously operating magneto. If the Bates and Weber patents should be combined in an arrangement such as suggested by the Examiner, the several parts would perform a function not contemplated by either Bates or Weber, to-wit; the cutting out of the magneto during missing or non-firing periods of engine operation. It is believed that applicant's conception of mechanism cutting out the magneto as well as the igniter should be covered by patent claims.

We believe the foregoing claims clearly and distinctly bring out the several features which distinguish applicant's invention from Bates and Weber and everything else in the prior art as well.

Favorable consideration of the application as now submitted is respectfully urged.

EDMUND JOSEPH KANE,
By WILLIAMS & BRADBURY,
Attorneys.

541428 132

(Endorsed) Jan 29 1919

873

2—224

Div. 28 Room 63

Paper No. 31

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

RYH

8

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

July 21, 1916.

Williams & Bradbury,

720 Monadnock Block,

Chicago, Ill.

(Rubber stamp) U. S. Patent Office Jul 21 1916 Mailed.

Please find below a communication from the Examiner in charge of the application of Edmund Joseph Kane, S. No. 541,428, filed Feb. 2, 1910, Electric Igniters for Explosive Engines.

THOMAS EWING

C16—2631.

Commissioner of Patents.

The amendment of July 20, 1916, directing the cancellation of the rejected claims and presenting new claims has not been entered.

This application was remanded to the Examiner by the Commissioner for reconsideration of the application and claims in view of Brown's affidavit, but for no other purpose. The case is not open for further prosecution before the Examiner. See Rule 140.

Since this case has been reconsidered by the Examiner to the extent for which it has been remanded, it cannot be further considered by him or prosecuted before him except by express order of the Commissioner.

BENSON.

Examiner.

HJS

541428 133

(Endorsed) Jan 29 1919

(In left-hand margin) Fix hg. Not legible.

600

Defendants' Exhibit No. 54.

874

2—20

Address Only
The Commissioner of Patents,
Washington, D. C.

Paper No. 32

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington

O
Sir:

August 24, 1916.

The case of Edmund J. Kane }
Electric Igniters for Explosive } Appeal to
Engines } Commissioner.

Serial

*(*Intf.*) No. 541,128, will be heard by the * (*Examiners in Chief*)
on the 12th day of September, 1916.

ten
The hearings will commence at *(*one*) o'clock, and as soon
as the argument in one case is concluded the succeeding case
will be taken up.

If any party, or his attorney, shall not appear when the
case is called, his right to an oral hearing will be regarded as
waived.

The time allowed for arguments is as follows:

Ex parte cases, thirty minutes;

Motions, thirty minutes, each side;

Interference appeals, final hearing, one hour each side.

By special leave, obtained before the argument is com-
menced, the time may be extended.

The appellant shall have the right to open and conclude in
interference cases, and in such case a full and fair opening
must be made.

Briefs in interference appeals must be filed in accordance
with the provisions of Rule 147.

Respectfully,

To Williams & Bradbury
720 Monadnock Block,
Chicago, Ill.

THOMAS EWING
Commissioner of Patents.

541428 134

(Endorsed) Jan 29 1919

6—1961

*Matter in italics in parentheses, stricken out in original transcript.

875

541,428—33

(Rubber stamp) Docket Clerk Sep 15 1916 U. S.
Patent Office.

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane

Case 1.

Invention—Electric Igniters for Explosive Engines

Serial No.—541,428

Filed February 2, 1910.

BRIEF ON APPEAL

TO THE HONORABLE COMMISSIONER OF PATENTS

Statement

This application comes before your Honor on an appeal from a decision of the Board of Examiners in Chief affirming the action of the Primary Examiner finally rejecting the claims in this application upon two patents of the prior art, namely, Bates patent No. 946,816, and Weber patent No. 820,535. Prior to the date originally set for this hearing before your Honor the applicant presented an affidavit of one Walter Brown, setting forth facts in the nature of newly discovered evidence, and at the same time petitioned your Honor to remand this application to the Primary Examiner for reconsideration in view of the facts set forth in the affidavit of the aforesaid Walter Brown. That petition was granted by your Honor on July 13, 1916. Shortly thereafter, to wit, on July 17, 1916, the Primary Examiner acted upon the application as remanded and abided by his former action finally rejecting the application. This action of July 17, 1916, was crossed in the mails by a written amendment and argument forwarded by applicant's attorneys on July 18, 1916. By our communi-
541428 135

(Endorsed) Jan 29 1919

876 cation of July 18, 1916, (filed July 20, 1916) we sought to substitute three new claims for those previously in the application, and at considerable length discussed the Brown affidavit and its bearing upon the questions involved in this case. The Primary Examiner by an action dated July 21, 1916, refused to admit our amendment of July 18, 1916. This application now comes before your Honor on the regular appeal from the decision of the Board of Examiners in Chief.

Although the three claims included in our amendment of July 18, 1916, were not admitted by the Primary Examiner, we assume that your Honor in the exercise of your supervisory authority can and will direct the entry of said claims if the facts presented convince your Honor that the subject matter of this appeal is patentable and that the three new claims better present that patentable subject matter than do the claims under final rejection.

The Subject Matter

The subject matter of the appealed claims is an electric igniter for explosive engines. The applicant's application discloses an internal combustion engine of the hit and miss type wherein during overspeeding, or otherwise stated, during non-firing periods, a speed governor acting through the agency of the exhaust valve rod acts to hold the exhaust valve in open position and thus for a period prevents the normal intake, compression and ignition of combustible gases within

541428 136

—2—

(Endorsed) Jan 29 1919

877 the engine cylinder. The ignition mechanism per se consists of an oscillating magneto and a pair of make and break electrodes so connected and related to the magneto that the electrodes are separated in timed relation to the operation of the magneto to permit an ignition spark to pass at the proper instant in the cycle of engine operation. The proper recurring oscillations of the magneto rotor are accomplished by a push rod driven from the engine crank shaft. The primary object of the applicant's invention is to eliminate the operation of both the magneto and the spark electrodes during missing or overspeeding periods in the operation of the engine, without, however, rendering both or either of these parts incapable of performing their respective functions whenever it is proper and necessary that a spark should pass within the engine cylinder. A hit and miss engine, particularly when it is running under a light load, is apt to miss very frequently. In the prior art whenever a magneto, whether it be of the oscillating or rotary type, was used in connection with such engine it was necessary in order that the magneto might function properly during hitting or firing periods to have the magneto operate during missing or non-firing periods as well. Thus, under the practice of the prior art, the

wear and tear on the magneto was the same during missing periods as during hitting periods, although under the first condition the magneto performed no useful function, its operation being a mere waste of energy and the cause of needless wear on the operating parts of the mechanism.

541428 137

—3—

(Endorsed) Jan 29 1919

878 This applicant provided means cooperating with the speed governor and the exhaust valve rod arranged to lift the magneto push rod out of driving relation with the magneto during missing or non-firing periods, thus preventing the operation of the magneto during missing periods, the several parts cooperating and functioning to permit the push rod to engage and operate the magneto in the usual manner during hitting or firing periods. It was not until after the applicant had made his invention that engine manufacturers came to learn that it was possible to eliminate the operation of the magneto during overspeeding or non-firing periods and at the same time have the magneto always in readiness properly to perform its function when the engine ceased to overspeed. The Kane invention has gone into wide commercial use as is evidenced by the affidavits of Edmund Joseph Kane and Maurice Kane of record in the application, the said affidavits having been filed along with applicant's brief before the Honorable Board of Examiners in Chief.

The Prior Art

Bates Patent:

Briefly, the Bates patent (No. 946,816) discloses an engine of the type wherein a speed governor operates through an exhaust valve rod to hold the exhaust valve open and thus to prevent an explosion within the engine cylinder whenever the engine exceeds a certain predetermined speed. Bates

541428 138

—4—

(Endorsed) Jan 29 1919

879 shows make and break electrodes for use with battery current and for operating the movable electrode he provides a reciprocating push rod, generally similar to that employed by this applicant. The reciprocating push rod which operates the movable electrode rides on a roller carried by a rocker or lever and the exhaust valve operating rod is provided with a pin or abutment arranged to engage the rocker

or lever and shift the reciprocating rod to such a position that it does not operate the movable electrode, when, during overspeeding, the exhaust valve is being held open by the engine governor. Thus, Bates renders the spark electrodes inoperative when the engine is missing. Bates makes no mention of a magneto and his arrangement was clearly intended to be used with battery current alone. We are free to admit that the Bates patent discloses an operative and meritorious invention and one which has recently gone into commercial use, as pointed out in Mr. Walter Brown's affidavit. It is our position, however, that this applicant has exercised invention by placing a magneto in the Bates arrangement in a particular manner whereby this applicant has secured a new and highly desirable result certainly not contemplated by Bates, as he discloses no magneto, and a result which has never been attained before when a magneto was used.

Weber Patent:

The Weber patent (No. 820,535) discloses an oscillating magneto with which is associated make and break electrodes. Weber also discloses a reciprocating rod for effecting the

541428 139

—5—

(Endorsed) Jan 29 1919

880 operation of the oscillating magneto and the magneto is designed to separate the spark electrodes to create a spark when the magneto is operated. It is of interest to note, as is pointed out by Mr. Brown in his affidavit, that although the application for the Weber patent was filed in 1903 and the patent issued in 1906 oscillating magnetos never came into commercial use until they were perfected and placed upon the market by the Webster Electric Company, Mr. Kane's assignee. The Weber patent is, therefore, undoubtedly nothing but a paper patent, but, be that as it may, the important thing to be borne in mind is the fact that the Weber device was intended to be continuously operating in the sense that the magneto is actuated every time the piston in the associated engine reaches the end of its compression stroke. The Weber patent makes no provision for cutting out the magneto during overspeeding or non-firing periods of engine operation.

Continuously Operating Magnetos Generally

Prior to this applicant's invention it was old to use magnetos for ignition purposes in connection with various types of internal combustion engines. Such magnetos were of the

rotary armature type, were permanently geared with the engine crank shaft and therefore operated continuously during the operation of the engine regardless of whether or not the latter was overspeeding. As set forth in the affidavit of Mr. Walter Brown, prior to the invention of this applicant oscillating magnetos were practically unknown commercially, it being the well known rotary magnetos that were in commercial use. Therefore, in deciding whether this applicant exercised invention in the production of the subject matter of this application it is of interest to note what would have been done by one skilled in the art had he endeavored to incorporate the teachings of Bates in a magneto arrangement of the kind commercially known before applicant's invention. This phase of the matter will be discussed in connection with the Termaat & Monahan device mentioned in the affidavit of Mr. Walter Brown.

541428 140 —6—

(Endorsed) Jan 29 1919

881 cial use. Therefore, in deciding whether this applicant exercised invention in the production of the subject matter of this application it is of interest to note what would have been done by one skilled in the art had he endeavored to incorporate the teachings of Bates in a magneto arrangement of the kind commercially known before applicant's invention. This phase of the matter will be discussed in connection with the Termaat & Monahan device mentioned in the affidavit of Mr. Walter Brown.

The Weber Magneto as well as all of the Prior Art Magnetos are Continuously Operating.

The rotary magnetos of the prior art were, of course, continuously operating because they were permanently geared to the engine crank shaft and continued to operate during the operation of the engine regardless of the speed at which the engine operated. Although the Weber device is of the oscillating type rather than of the rotary type it is continuously operating, in the sense of the words as here used, to just the same extent as are the rotary magnetos of the prior art. An oscillating magneto is moved, tripped and oscillated at a certain point in the cycle of the operation of its associated engine. The oscillating magneto of the Weber patent operates once during every cycle of its associated engine regardless of the speed of that engine and is therefore continuously operating in the same sense as are the rotary magnetos and is distinguished in the same sense from applicant's magneto. The applicant's magneto is put out of commission

541428 141 —7—

(Endorsed) Jan 29 1919

882 during overspeeding or non-firing periods in the operation of the engine, but this is not true of the Weber device.

It, therefore, appears that in the prior art there is no ignition apparatus comprising a magneto wherein the magneto is put out of commission during missing or non-firing periods. This is of the essence of applicant's invention and we believe the conception on the part of this applicant of the possibility of putting the magneto out of commission during non-firing or missing periods, the desirability of so doing, and the provision of apparatus for accomplishing the same clearly entitles him to a patent for that which he has produced.

The Termaat & Monahan Device

The ignition mechanisms disclosed in the Termaat & Monahan catalog, identified in the affidavit of Mr. Walter Brown, exemplify what we believe one skilled in the art as it existed prior to applicant's invention would have done even had he perceived that it was desirable to incorporate a magneto in an arrangement similar to that of the Bates patent relied upon by the Primary Examiner. The position of the Primary Examiner is that the Bates and Weber devices may be combined in the manner defined by the claims without invention. Termaat & Monahan have combined the Bates arrangement with a continuously operating magneto of the prior art and have not attained the end which characterizes applicant's invention. It should be kept in mind that prior to the date of applicant's invention the art knew of nothing but continuously

541428 142

—8—

(Endorsed) Jan 29 1919

883 operating magnetos, Weber, as we have pointed out, being continuously operating as were the well known rotary magnetos. It therefore seems logical to assume that had anyone skilled in the art desired to place a magneto in the Bates arrangement he would have operated the magneto continuously and have cut out only the spark electrodes during non-firing periods as does Bates. This is precisely what Termaat & Monahan have done. Their magneto is continuously operative and is driven during non-firing or missing periods as well as during firing periods. During missing or non-firing periods the spark electrodes of Termaat & Monahan are put out of commission. An important thing to remember in connection with applicant's invention is the fact that prior to his invention no one had conceived of the desirability or possibility of eliminating the operation of the magneto dur-

ing non-firing or missing periods. This being the case, we submit it must be assumed that had anyone desired to place a magneto in the Bates arrangement he would have adopted a continuously operating magneto.

The Applicant's invention

For the sake of argument we are willing to admit that one skilled in the art and having a knowledge of the Bates patent might perhaps have arrived at a combination similar to the applicant's had he perceived the desirability and possibility of producing such a combination, but the record shows that prior to this applicant's invention no one had ever perceived

541428 134
—9—

541428 134

—9—

(Endorsed) Jan 29 1919

884 the desirability and possibility of such a combination,
and we submit that in view of the wide commercial use
which applicant's invention has been given the combination
in issue is of great merit and one which would certainly have
gone into wide commercial use prior to applicant's invention
had anyone of the many engineers engaged in this active art
perceived the desirability and possibility of the result which
characterizes applicant's combination or conceived of the
mechanism for attaining that result.

The applicant is in no way precluded from securing a patent covering his combination simply because the more important part of the work involved in the production of his invention resided in the act of discerning the desirability and possibility of eliminating the operation of the magneto during non-firing or missing periods and at the same time always having the magneto ready to function properly when it is necessary that a spark pass within the combustion cylinder of the exhaust engine. We submit that the question as to whether Kane has given to the public a novel and valuable invention should be determined by applying the test laid down by the United States Circuit Court of Appeals for the Seventh Circuit in the case of the General Electric Company vs. Sangamo Electric Company, (174 Fed. Rep. page 251). The language of the court in that case is as follows:

"Invention, in the nature of improvement, is the double mental act of discerning, in existing machines or proc-

esses or articles, some deficiency and pointing out the means of overcoming it."

541428 144

—10—

(Endorsed) Jan 29 1919

885 We submit that the applicant Kane performed the double act referred to by the court in the opinion above quoted. He realized that it was undesirable to operate a magneto during non-firing or missing periods as well as during firing or hitting periods of engine operations, he realized that it was possible to eliminate the operation of the magneto during non-firing periods and at the same time have the magneto in condition always properly to function during hitting or firing periods, he moreover provided mechanism whereby this end was attained for the first time.

The mere simplicity of the mechanism whereby applicant attains the novel result characteristic of his invention should not in any way preclude him from patent protection, for, as the Supreme Court of the United States says in the case of *Potts vs. Creager*, (105 U. S. 608):

"The apparent simplicity of a new device often leads an inexperienced person to think that it would have occurred to anyone familiar with the subject. But the decisive answer is that with dozens and perhaps hundreds of others laboring in the same field, it had never occurred to anyone before. The practiced eye of an ordinary mechanic may be safely trusted to see what ought to be apparent to everyone."

We cannot understand how the Office can properly hold that the combination of Bates and Weber to produce a combination similar to applicant's is an obvious matter which should be apparent to anyone when it appears and is well known that the art of gas engine ignition is and for many years past has been extremely active and still prior to the invention of this applicant no one of the hundreds of engineers engaged in the production of ignition mechanisms per-

541428 145

—11—

(Endorsed) Jan 29 1919

886 ceived that it was either possible or desirable to eliminate the operation of an ignition magneto during missing or non-firing periods of engine operation. The mechanism whereby applicant accomplishes the result of his invention may be extremely simple but it is a real invention neverthe-

less. He departed from the recognized practice of the art and cut his magneto out of operation during missing or non-firing periods of engine operation, whereas all his predecessors who had employed magnetos had used continuously operating magnetos.

The Claims

The claims now in the application and under final rejection are as follows:

1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

2. The combination in an explosive engine having a speed governor, an exhaust valve operating rod operatively connected with the speed governor, of a magneto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.

541428 146

—12—

(Endorsed) Jan 29 1919

887 The claims which we sought to substitute by our amendment of July 18, 1916, filed July 20, 1916, are as follows:

1. In combination with an internal combustion engine, a speed governor associated with the engine and operatively connected therewith, ignition mechanism for said engine comprising make and break spark electrodes and a magneto, means operated by the engine for effecting the operation of both the magneto and spark electrodes in timed relation one to the other, and mechanism controlled by said speed governor for rendering said engine operated means incapable of effecting the operation of the magneto and spark electrodes whenever the engine passes or exceeds a certain predetermined speed.

2. An internal combustion engine of the hit and miss type having an exhaust valve, an exhaust valve operating rod and a speed governor in operative relation to said exhaust valve operating rod arranged to shift the latter

to hold the exhaust valve in open position whenever the engine exceeds a certain predetermined speed, in combination with an igniter comprising make and break electrodes, a magneto for supplying ignition current to said igniter, a reciprocating push rod driven by the engine for effecting actuation of the magneto and igniter electrodes together with means operated by the exhaust valve operating rod for rendering the reciprocating push rod incapable of actuating the magneto and igniter electrodes whenever, when the engine exceeds a certain predeter-

541428 147 —13—

(Endorsed) Jan 29 1919

888 mined speed, the exhaust valve operating rod and the governor co-operate to hold the exhaust valve in open position, as aforesaid.

3. In combination with an internal combustion engine, a speed governor driven from the engine, ignition mechanism for said engine comprising an igniter and a magneto for supplying ignition current to said igniter, actuating mechanism driven by the engine for effecting the operation of the magneto, and devices controlled by the speed governor for rendering said actuating mechanism incapable of effecting the operation of the magneto whenever the engine passes or exceeds a certain predetermined speed.

We believe that the claims in the application and under final rejection define patentable subject matter. It is possible, however, that the three claims which we have sought to have entered define the invention a little more clearly as to structure at least and for that reason are more desirable claims than those now in the application. In his action of July 17, 1916, the Examiner says, "the Examiner's position is that the Bates and Weber devices may be combined in the manner defined by the claims without invention." The Examiner then goes on to say, "When the Weber and Bates devices are combined in the manner defined by the rejected claims no new combination, result or effect is produced. This language leads us to believe that the Examiner is of the opinion that although applicant's combination does possess merit, the patentability of the combination is not brought out in the claims

541428 148 —14—

(Endorsed) Jan 29 1919

889 on appeal. We fail to understand the Examiner's position, but if the claims on appeal are in the opinion of the Office not patentable whereas those submitted by our unentered amendment of July 18, 1916, are patentable, we believe your Honor will and in equity should permit the last group of claims to be substituted for the two claims under final rejection.

We can hardly understand the Examiner's position when he says, "When the Weber and Bates devices are combined in the manner defined by the rejected claims no new combination, result or effect is produced." Applicant employs a magneto and eliminates the operation of that magneto during non-firing or overspeeding periods of engine operation. The Weber magneto is continuously operating, as we have previously pointed out, and Bates shows no magneto whatsoever. We do not admit, of course, that applicant's combination is a mere aggregation of both Bates and Weber, but we do urge that applicant has produced a new combination and has attained a new result or effect.

Conclusion:

We respectfully submit that inasmuch as it clearly appears that the applicant was the first to perceive the possibility and desirability of eliminating the operation of an ignition magneto during overspeeding or non-firing periods of engine operation and was the first to provide mechanism for attaining that end, he is clearly entitled to a claim or claims that will fully protect that which he has produced. We believe that

541428 149

—15—

(Endorsed) Jan 29 1919

890 we have clearly demonstrated that the trend and best practice of the art as it existed prior to applicant's invention was to employ continuously operating magnetos and that applicant departed from the beaten path when he perceived of the possibility and desirability of cutting out the magneto during non-firing periods and in providing mechanism for attaining that end.

We believe that your Honor should grant adequate patent protection to this applicant either by reversing the decision of the Board of Examiners in Chief as to the two claims now in the application or by directing the Primary Examiner to allow in their stead the three claims last above quoted and

which were submitted for the first time by our amendment of July 18, 1916, (Filed July 20, 1916).

It is clear that this applicant has made magneto ignition cheaper and that a return to the prior art in the class of apparatus to which this invention relates would be a retrogression. Measured by the test laid down in the case of *O'Rourke vs. McMullen*, (88 C. C. A. 115), it seems clear that this applicant is entitled to a patent. In that case the court said:

"Has the patentee added anything of value to the sum of human knowledge, has he made the world's work easier, cheaper and safer, would the return to the prior art be a retrogression? When the court has answered this question, or these questions, in the affirmative, the effort should be to give the inventor the just reward of the contribution he has made."

Respectfully submitted,

EDMUND JOSEPH KANE,

By WILLIAMS & BRADBURY

Attorneys.

541428 150

—16—

(Endorsed) Jan 29 1919

891 Recor. Volume 120

541,428—34

Page 349

Hearing:

September 13, 1916.

MSD

IN THE UNITED STATES PATENT OFFICE.

Ex parte Edmund Joseph Kane.

Application for Patent.

Appeal from Examiners-in-Chief.

Electric Igniters for Explosive Engines.

Application filed February 2, 1910, No. 541,428.

Messrs. Williams & Bradbury for applicant.

The applicant appeals from the decision of the Board of

examiners-in-chief sustaining the ruling of the primary examiner that it did not involve invention to produce the device defined in the following claims, in view of the prior patents of Weber, No. 820,535, of May 15, 1906, and of Bates, No. 946,815, of January 18, 1910:

1. In an explosive engine, the combination with a magneto, of means for operating the magneto by the running of the engine, a speed governor operated by the engine, and means under the control of the speed governor for rendering the magneto operating means inoperative when the engine passes or exceeds a predetermined speed.

2. The combination in an explosive engine having a speed governor, and an exhaust valve operating rod operatively connected with the speed governor, of a mag-
541428 151

(Endorsed) Jan 29 1919

892 neto, means for operating the magneto by the running of the engine, and means adapted to be operated by the movement of the exhaust valve operating rod for rendering the magneto operating means inoperative.

The subject matter of the application is an explosive engine of the type in which the explosions are caused to cease whenever the engine, being under small load, overruns a predetermined speed limit. As explained in the Bates patent at page 1, line 14, there is provision for a governor which maintains the exhaust valve open for this purpose. Bates, having noted that in such engines there were no means for eliminating the spark while the exhaust was held open, undertook to cure this defect by combining with a reciprocating rod, operated by the engine to close a switch and cause a spark from a battery, another moving element operated by the governor to put the switch-operating device out of commission when the exhaust valve was held by reason of the overspeeding. Engines of this type have been frequently provided with an ignition system which employs a magneto, which is essentially a device for relatively moving two magnetic fields to generate a current, which current was caused to jump across a spark gap located in the cylinder. There are rotary magnetos and oscillating magnetos, and both Weber and the applicant employ oscillating magnetos.

In the Weber patent, which it will be noted antedates
541428 152

(Endorsed) Jan 29 1919

893 Bates about five years, the moving member of the magneto is pushed forward against a spring to a given point and then the pushing device is tripped allowing the movable member to be suddenly thrown back. The device which operates the oscillating magneto is the push rod 35, moved by the arm 37 on the shaft 36, connected with the engine; the escapement is caused by the arm 35 striking the wedge 42. The sudden movement of the armature causes a momentary current of sufficient intensity to produce a spark between two electrodes, which at that moment are either closed or separated (page 3, line 100). This magneto, of course, operates at every stroke of the piston whether there is a load on the engine or not; there is no suggestion of suspending the operation of the magneto or the occurrence of the spark. The Bates patent, on the other hand, makes no suggestion of how the spark interrupting device could be adopted to use with a magneto.

The use of a magneto, whether of the oscillating or the rotary type, involved the necessity of its moving parts being precisely timed with the making or breaking of the contact which causes the spark, and it had apparently been considered necessary to operate the magneto simultaneously with the engine all the time. It is in evidence that the most commonly used magneto was of the rotary type. The applicant seeks to eliminate the wear and tear and waste of energy on the magneto by not only interrupting the spark, but by stop-

541428 153
(Endorsed) Jan 29 1919

894 ping the operation of the magneto itself, at the times when there is to be no explosion and no spark is needed. The applicant states in his brief, and nothing in the record negatives the statement, that:

* * * It was not until after the applicant had made his invention that engine manufacturers came to learn that it was possible to eliminate the operation of the magneto during overspeeding or non-firing periods and at the same time have the magneto always in readiness properly to perform its function when the engine ceased to overspeed.

But the Board, in holding there was no invention presented by the applicant, said that anyone applying the rocking magneto of Weber to the Bates engine would naturally adapt the

Bates mechanism to the suspension of the operation of the magneto when the exhaust valve is held open by the governor.

In the applicant's device the rod 36 is regularly reciprocated by the engine and as it moves forward it strikes the arm 35, fixed on the rocker shaft 16, which in rocking turns the rotary member of the magneto through an angle so as to warp the magneto field. When the rod 36 progresses until the wedge 62 rides up on the roller 38, the forward end of the rod is lifted and escapes the arm 35, thus allowing the shaft 16 to be thrown back suddenly by the spring 31, which has the effect of creating a momentary current and at the same time of making or breaking the contacts 10, 26, located in the

541428 154
(Endorsed) Jan 29 1919

895

5

cylinder. When the speed of the engine passes the proper limit, the governor shown attached to the shaft 5 operates to lower the bar 54 and hold the rod 43 forward in such a position that the roller 61, acting on the wedge 64, prevents the push rod 36 from dropping low enough to engage the rock arm 35.

The invention resides in this arrangement by which the governor interrupts the actuating mechanism of the magneto and spark gap. It is a simple device; but the point is that before one can device means for doing this thing he must first conceive of the desirability of doing it, of the advantages to be gained, and recognize the fact that the thing can be done. As the Seventh Circuit Court of Appeals said in *General Electric Co. v. Sangamo Electric Co.*, 174 Fed. Rep., 246, 251, invention "is the double mental act of discerning, in existing machines * * *, some deficiency, and pointing out the means of overcoming it."

It was the opinion of the Board that it would be natural and obvious, in view of the patents of Bates and Weber, to put the magneto in place of the switch 11 of the Bates patent and operate it in the same way. Since the decision of the Board, the applicant has filed an expert affidavit, apparently showing that on the contrary the natural and obvious thing to do, would not be this, but would be to interrupt the spark alone, as Bates did, and not the magneto. A well known and

541428 155
(Endorsed) Jan 29 1919

late device is the spark interrupter used with a magneto in the catalogue of the Termaat & Monahan Co., filed as an exhibit with the Brown affidavit in the record. Given the desirability of an improvement, the test of obviousness is whether anyone saw it. The evidence shows that a skilled engine builder in full view of the patents of Bates and Weber, got from Bates no hint to interrupt the operation of the magneto, but only the idea of interrupting the spark. It would not be a mere case of substitution to put Weber's generating magneto in place of Bates' switch 11, because Bates' switch 11 is not a generator. It is only a switch, and it necessarily implies the presence of a battery, which Weber dispenses with. The part of Weber's device which corresponds to Bates' switch 11 is the spark gap 36, the magneto corresponding in function to Bates' battery. It cannot be denied that the applicant has produced a new and valuable function by his improvement, simple as it is. It can not be held that the change did not involve invention. On the contrary, it clearly did involve invention, at least as broad as the claims presented, either on the appeal or in the proposed amendment offered July 21, 1916.

The decision of the Board accordingly must be reversed.

F. W. H. CLAY
Assistant Commissioner.

September 20, 1916.

541428 156

(Endorsed) Jan 29 1919

897

Letter No. 35

2—03

Address only
The Commissioner of Patents
Washington, D. C.

EEG

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

September 20, 1916.

In the matter of the Application of Edmund J. Kane, Electric Igniters for Explosive Engines; Filed Feb. 2, 1910 Serial No. 541,428.	}	On Appeal to the Commissioner.
---	---	-----------------------------------

Sir:

Please find enclosed herewith a copy of the decision of the
Assistant Commissioner in the above entitled case.

By direction of the Commissioner:

Very respectfully,

Chief Clerk.
F.

Edmund J. Kane,
c/o Williams & Bradbury,
720 Monadnock Block
Chicago, Ill.

541428 157

(Endorsed) Jan 29 1919

(Rubber Stamps) Application Room Sep 29 1916 U. S. Patent Office. U. S. Patent Office, Sep 30 1916 Division XXVIII. 36

UNITED STATES PATENT OFFICE

Applicant—Edmund Joseph Kane

Invention—Electric Igniters for Explosive Engines

Serial No.—541,428

Case 1.

Room 63

Div. 28

Filed February 2, 1910.

September 29, 1916.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

In the matter of the above entitled application which has just been returned to the Primary Examiner after a decision Commissioner

by the Assistant * (*Examiner*) on the merits, we respectfully request that the three claims included in our amendment of July 20, 1916, be renumbered and entered in the application as claims 3, 4 and 5. Kindly disregard that part of our amendment of July 20th, requesting that the two claims involved in the appeal be canceled. We understand from the Principal Examiner that in view of Assistant Commissioner Clay's decision * (*that*) there can be no objection to the entry of these three additional claims inasmuch as the Assistant Commissioner has held these claims involve patentable subject-matter. The application is now in condition for formal allowance and it is respectfully requested.

Respectfully submitted,

EDMUND J. KANE.

By WILLIAMS & BRADLEY

Attorneys.

541548 158

(Endorsed) Jan 29 1919

*Matter in italics in parentheses, stricken out in original transcript.

899

K. O'D.

2—181

Address only
The Commissioner of Patent,
Washington, D. C.

Serial No. 541,428.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington Oct. 4, 1916.

Edmund Joseph Kane, Assor.

Sir: Your Application for a patent for an Improvement in Electric Igniters for Explosive Engines, filed Feb. 2, 1910, has been examined and Allowed.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of \$15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, lithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor, Title of Invention, and Serial Number as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of the Assignees.

If you desire to have the patent issue to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of Five Cents Each. The money should accompany the order. Postage stamps will not be received.

Final fees will Not be received from other than the appli-

Defendants' Exhibit No. 54.

agent, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,

THOMAS EWING
Commissioner of Patents.

Williams & Bradbury,
720 Monadnock Block,
Chicago, Illinois.

(In right-hand margin) ~~25~~ In Remitting the Final Fee Give the Serial Number at the Head of This Notice.

(In left-hand margin) ~~25~~ Uncertified Checks Will Not Be Accepted.

541548 159

5-1641

(Endorsed) Jan 29 1919

100 Telephones Harrison } 3634
 } 3638

(Across face) \$20 Ch E. C. C. U. S. Pat. Office.
Williams, Bradbury & See
Attorneys and Counselors
in
Patent and Trade-Mark Causes
1315 Monadnock Block
Chicago

Lynn A. Williams
Clifford C. Bradbury
Robert M. See
Albert G. McCaleb
Robert F. Bracke

October 14, 1916.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

We enclose herewith Lynn A. Williams' check for \$20.00 in payment of the final fee on the patent application of Edmund Joseph Kane for an improvement in Electric Igniters for Explosive Engines, Serial No. 541,428, filed February 2, 1910, allowed October 4, 1916, and assigned to the Webster Electric Company.

Respectfully,

Enclosure.

WILLIAMS, BRADBURY & SEE

541428 160

(Endorsed) Jan 29 1919

906

2—421

1910

Contents:

Print S Mar 3, 1915

1. Application O K papers.
2. Rejection March 26 1910
3. Amdt A Mar. 15/11
4. Amdt B Mar 16/11
5. Rejection May 4—1911
6. Amdt C Feb. 17, 1912
7. Rejection Mar. 29, 1912
8. Amdt D Feb. 15, 1913
9. Rejection Apr 22—1913
10. Ind. Power of Atty. Feb. 19, 1914.
11. Amdt E Apr. 18, 1914
12. Final Rej. May 9—1914
13. Amdt F Oct 22, 1914
14. Letter Nov. 12—1914
15. Ex'rs-in-Chief (\$10) Feb. 23, 1915.
16. Examiners State, Feb. 27, 1915.
17. Hearing April 7/15/P. M.
18. Brief March 31/15
19. Decision by Board (Aff'd.) June 26/15.
20. Notice of Decision June 26/15.
21. Power to Inspect Jan 21/16
22. Revocation and Power of Attorney April 26/16
23. Notices of Revocation and Acceptance May 2/16
24. Examiners-in-Chief (\$10) June 26, 1916.
25. Notice of Hearing, July 1, 1916
26. Petition to remand to Ex. July 12, 1916.
27. Notice of approval July 13/16.
29. Rej. July 17—1916
30. * (*Proposed*) Amdt G * (*not enter*) July 30/16.
31. Letter July 21—1916.
32. Notice of hearing Aug. 24, 1916
33. Brief Sept. 15/16
34. Commr's Decision Sept. 20/16
35. Notice of decision Sept. 26, 1916
36. Letter Sept 29/16.
- 37.
- 38.
- 39.
- 40.

*Matter in italics in parentheses, stricken out in original transcript.

41.
42.
43.
44.
45.
46.
47.
48.
49.
50.

541428 161

(Endorsed) Jan 29 1919 11,587/19

907

2—390.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This is To Certify that the annexed is a photographic copy
from the Records of this Office of the File Wrapper and
Contents in the matter of the

Letters Patent of

Edmund Joseph Kane, Assignor, by Mesne Assignments, to
Webster Electric Company,

Number 1,280,105, ———— Granted September 24, 1918,
for

Improvement in Electric Igniters.

In Testimony Whereof I have hereunto set my hand and
caused the seal of the Patent Office to be affixed at the City
of Washington, this 29th day of January, in the year of our
Lord one thousand nine hundred and nineteen and of the In-
dependence of the United States of America the one hundred
and forty-third.

F W H CLAY

Acting Commissioner of Patents.

(Seal)

6—1625